

# LINCOLN DOUGLAS POSITIONS

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Number 4  
DEONTOLOGY

**The Lincoln-Douglas Positions  
Four - Deontology  
by Scott Robinson**

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For information on Paradigm Debate Products:

**PARADIGM RESEARCH**

P.O. Box 2095

Denton, Texas 76202

Toll-Free 800-837-9973

Fax 940-380-1129

Web /[www.oneparadigm.com/](http://www.oneparadigm.com/)

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# **LD POSITIONS**

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## INTRODUCTION TO LD POSITIONS

The original edition of LD Positions exceeded all of my hopes and expectations. The success of the original edition inspired me to work on a new, expanded edition over the past few years. I can only pray that these books reach as many students as the original editions and that readers can gain a better understanding of key arguments in the canon of LD debate.

In this new edition, you will find new authors and new arguments as well as minor revisions to the original texts. These new authors serve to extend on major themes often present in the original text. The new authors also bring new arguments and new perspectives to the various positions. The addition of the new authors should provide new alternatives to case writing and debates on a wide variety of topics.

These books are written for the novice debater, just beginning to confront these issues, as well as experienced debaters who are familiar with many of these arguments. For the novice debater, these books provide an accessible introduction to often-daunting texts of political philosophy. LD Positions will examine the major themes in each text and contrast each text with major opponents. These books in no way replace the original texts, but should help a student approach the original texts. I suggest reading through each LD Position once. Then, read the LD Position a second time while simultaneously reading the original texts.

These strategies are particularly important when approaching advanced texts. Some authors (notably, Sandel and Gewirth) are very difficult to understand. You have to spend time thinking about their arguments. Better yet, you should organize a group to discuss the arguments. Your debate team is a pre-defined group that might be interested. Even without a debate team, you might be able to find interested people to join you in reading through these classic texts. Philosophy is a pleasure best enjoyed when shared. Discussing these arguments in a group will help you see the arguments from a variety of perspectives. In order to aid in the group reading process, I have provided discussion points at the end of various sections of each text.

Advanced students will find a different set of lessons in LD Positions. Advanced students will find applications of abstract principles to concrete policy issues. Advanced students will also find a discussion of issues that are often ignored in debates on the issues. The LD Positions are simply more in-depth than any lecture or debate case can be. Finally, the LD Positions use contrasts of closely related works to present each work in a context often missing in debate. Each philosopher is discussed in the context of his or her contemporaries and the historical tradition in which he or she is writing. This context provides a dimension to reading political philosophy that is often missing in debate.

The LD Positions are not comprehensive critical analyses of the various authors discussed. Space would not allow a comprehensive treatment of even one author for each volume. People seeking more advanced treatments of the authors should find books written by trained political philosophers who have devoted their lives to these issues. The LD Positions are written from the perspective of a debate coach and do not focus on many issues that while important to philosophical discussions are peripheral to most LD debate topics.

The LD Positions are also not a comprehensive treatment of all arguments relevant to LD Debate. I have selected these issues based on my experiences. I have found that the authors discussed in LD Positions are the most frequently relevant and most frequently discussed authors in LD debate. There are many authors who are excellent political philosophers that simply were not appropriate for the LD Positions as currently designed.

With these caveats in mind, I would suggest you keep the following objectives in mind while you read this book.

1. The back of the pages of this book were left blank so that you can take notes. Use this space to jot down your ideas on your present topic or any other ideas you have for future topics. Since you should read through these books multiple times, these notes can mark your progress and the evolution of your thinking regarding each position. You should keep these notes in order to address your questions to friends or coaches.
2. Read these texts alongside the original texts when possible. Each position is written in the order of the original texts where possible (sometimes at the cost of clear organization). This format should help you read the original text alongside each LD Position. This will give you a far richer appreciation of the context of the arguments and give you additional sources of arguments I was not able to cover in this book.
3. There are a number of new additions to the format. You will find discussion questions and sample resolutions to stimulate thought and conversation on the different theories. You will also find a terminological index that defines some of the key terms that are not found in a standard dictionary.
4. Finally, you will find a sample case using the authors in each volume. The cases will illustrate the application of these arguments to actual debate topics. In order to make the cases accessible to any reader, these cases only use quotations appearing in the text. This leaves many of the arguments (particularly the specific contentions) underdeveloped. The purpose of the cases is to illustrate the use of the substantive material in the lectures and not to illustrate the ideal case for any topic. You should focus your attention on the value and criteria in each case and how the arguments are linked to the other arguments (that in practice should have better evidence).

You are about to begin a journey through some of the most important issues in political and moral philosophy. I only hope that you can get as much out of these philosophies as I did in my first exposure to these issues. Enjoy the ride.

## DEONTOLOGICAL THEORY IN LD

A friend of mine once told me that it was always interesting to think that, on any given weekend, half of the people at a tournament are probably misinterpreting Kant. This is a pretty sad statement, but it is fairly accurate. I have always been hesitant to suggest running cases based upon Kant. I feel that the theory is very complicated and hard to defend against a knowledgeable cross examiner.

My goal is more to make you a knowledgeable debater; able to attack Kant's theory, rather than to enable you to defend his theory. You should be able to come away with an understanding of Kant's arguments sufficient to run a case based upon his positions, but you will soon discover that it will be hard to explain Kant well enough in a 6 minute case (much less a 4 minute portion of one).

One thing I want to steer you away from specifically is the trend to flippantly refer to Kant, or any other philosopher. In my experience as a judge, I have seen a distressingly large number of debaters (even very good debaters) refer to Kantian principles without explaining them at all. The notorious example of this that I see at almost every tournament is the invocation not to "use man as a means".

I hope this book allows you to grow past the need to refer to this type of vague and unsupported argumentation. A solid understanding of Kant's theory will allow you to identify when Kant's arguments apply and when they do not. At the same time, you should be able to shield yourself from the abuse of Kantian catch-phrases.

Despite the warnings, there are a lot of good reasons to study Kant's philosophy. He represents a major movement in political and moral philosophy which has influenced all of modern philosophy. Rawls and others explicitly refer to Kant as a major influence upon their thinking and works. He wrote the major alternative to the utilitarian thinkers (covered in LD Positions #5 - Utilitarianism) in the form of a Deontological theory.

Deontological ethics refers to any theory of morality which suggests that morality is based upon rule-based actions, rather than acting to maximize an end. Deontological ethics are commonly expressed in terms of the means; but what exactly does that entail? In colloquial terms, this represents the phrase "the ends do NOT justify the means". There are some things that a person can not do morally, regardless of the outcome.

This may seem like a very defensible stance and, indeed, it has a lot of appeal. However, many people tend to accept it blindly. The fear of sounding Machiavellian dissuades many people from questioning the fundamental premises of deontology. I will split these into two major parts. The first is the proposition that there are some rules that are unbreakable, no matter the outcome.

The second proposition, and the more difficult of the two by far, is the identification and justification of the specific rules that can not be broken. I will take some space here to look at the first proposition; the rest of the book is spent looking at Kant's answer to the second proposition.

What should someone NEVER be allowed to do? Is there something that can never be justified by the outcome? We tend to spit barbs about justifying the means by the end, but what does that represent? In fact, the term "justified" has a connotation of a trade-off between an ideal plan and a sacrificial one. For instance, we do not say that I am "justified" in treating people well. We only speak of justifiable poor treatment (such as the imprisonment of the guilty). If we enforce any rule absolutely, then we are saying that there is NO justified reason for breaking that rule. In a world of exceptions, I find absolute rules difficult to locate.

We quickly dismiss the absolute rule against killing when we allow murder in self-defense, war and capital punishment. None of these are often argued as being good, but they are often supported as being justified. To say that there is no justified sacrifice of individual life is to propose some pretty frightening scenarios. Most would agree with the moral problems inherent in the statement of "the ends justify the means", but the inability to justify a sacrifice leaves the door open for what some philosophers call moral catastrophe.

A CX question to challenge deontological theories, similar to the immortal ends/means questions, runs something like this: Would it be justified to kill an innocent if, in doing so, you saved the lives of 10 other people? How about a million? What is the moral difference? The answers will probably revolve around the ideas of moral inaction in the face of such a dilemma. This makes deontological theory seem shaky. If deontological theory gives unpalatable answers to such simple questions, and can not deal with conflicts of interest, what use is it?

You can see from the above question that, despite the current trend in LD to blindly accept deontology over utilitarian theories, there are a lot of ways to attack it. The key to attacking the first principle of deontology is to present conflict scenarios, such as those present in many of our LD resolutions. What happens when rules conflict? There seems to be an appeal to rules which protect the innocent, but, if their death is required to save the life of a group of other innocent people, the answer does not seem so clear.

This is a good case of how to attack deontological theories. But, how do you use these theories in LD? The answer should be pretty clear from the above discussion. You stay by your guns and argue that rules constrain moral actions. There are indeed some things that you can not do to other people. For instance, we can not torture innocent people. This seems clear. If someone questions the need for a conflict (because they expertly have also read this essay), you portray these examples as marginal and rare. You portray the acceptance of ends maximizing sacrifice, as worse than the small chance of a protective sacrifice inherent in deontology.

At the same time, you discuss your opponent in Machiavellian terms of "justifying" actions based upon effects rather than moral righteousness. You must suggest that a rule based system will decide what some call the "hard cases". Compare the likelihood of morally catastrophic situations to the likelihood of oppression in a utilitarian system. A common legal adage holds that "hard cases make bad laws."

The other response, to the difficulty in applying rules in hard cases, is to reverse the question. It is not easy to define what will actually maximize utility. If it is difficult to define the utility provided by any action, then it must be difficult to compare actions. If both rule based and ends based systems are hard to use, then you should not reject either system based upon this characteristic.



These are the general problems and opportunities in debating deontological systems in LD rounds. The inherent limitation in applying a rule based system is that most rules are negative in nature. For example, most rules forbid actions. Very few people refer to deontological requirements. Therefore, it is easier to use these theories when debating on the negative because you can argue that the resolution breaks some moral rule. However, even if you do not break any rule, more is required to prove the affirmative. Deontology usually defines what is morally forbidden and, in some cases, what is morally required. But, that leaves open the large number of actions which are morally acceptable or neutral. In the limited cases where a philosopher suggests moral requirements, an affirmative burden can be upheld with a rule system.

With this in mind, we can move on to the larger more specific questions involved in the second aspect of deontology: the argument for specific rules and rule hierarchies.

## INTRODUCTION TO KANT'S THE METAPHYSICS OF MORALS

Kant is one of many deontological authors, but he is the most famous and influential. At the same time he is the most popular deontological author for use in LD. Kant is representative of deontological authors and the objections to his theory will be applicable to most deontological theories, just as the strengths of his argument will be similar to the strengths of other deontological authors.

The work I will be focusing on is the text entitled THE METAPHYSICS OF MORALS. There are not a lot of translations of this work but it represents the most coherent presentation of his political and moral philosophy and is, therefore, useful for our purposes. It represents a late summation of his thought and is a follow-up to an earlier work entitled THE FOUNDATIONS OF THE METAPHYSICS OF MORALS.

### Foundations of Kantian Ethics

Kant starts THE METAPHYSICS OF MORALS with a general introduction to the moral theory and the vocabulary he will use in the rest of the book. You must take special care to understand what Kant means by specific words when he uses them. That necessity requires that you pay attention to the translator of the work to make sure that people are translating the words in the same manner. For this, I would suggest the translations of Mary Gregor. Her work seems the most clear and most cited translations.

Another problem with translated works is that page numbers will vary greatly by edition. Mary Gregor's works cite the original edition (volume and page numbers) for ease of reference. For our purpose, my citations will be a little different from the norm. The author and the title will remain the same. Each citation will be accompanied by the English page number and edition. Also, I will add the original German edition volume and page number after the traditional citation. These formalities aside, we can start looking at Kant's actual thought.

Kant's theory of morality is based on a priori principles. This simply means that the morality of an action is defined prior to the context of the action. For example, torture is immoral regardless of where and when it is done. An action should be analyzed based on its inherent characteristics. Torture is defined as a certain type of action, regardless of its context. These definitional characteristics are the basis for morality; not the analysis of context by experience.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.9 [6:215]

If the doctrine of morals were merely the doctrine of happiness it would be absurd to seek a priori principles for it. For however plausible it may sound to say that reason, even before experience, could see the means for achieving a lasting enjoyment of the true joys of life, yet everything that is taught a priori on this subject is either tautological or assumed without any basis. Only experience can teach what brings us joy.

This begins Kant's argument against the principles of utility that have usually dominated philosophy. The only basis for determinations of happiness is experience. You can only know the effect of an action by seeing it done, or learning about it from someone who saw it done. This limits the evaluation of the morality of an action to actions about which a person has specific knowledge.

This would require that only actions that are subject to study can be judged as moral or immoral. Kant suggests that experience is the sole basis for judgments of happiness, but this is not the correct criterion to decide issues of morality.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.10 [6:216]

[It] is different with the teachings of morality. They command for everyone, without taking into account of his inclinations, merely because and insofar as he is free and has practical reason. He does not derive instruction in its laws from observing himself and his animal nature or from perceiving the ways of the outside world, what happens and how men behave . . . . Instead reason commands how men are to act even though no example of this could be found, and it takes no account of the advantages we can gain, which only experience could teach us.

This is an elaboration on the concept of a priori judgment. Moral judgment is based upon pure reason rather than experience. This judgment allows for morality to be assigned independent of the "happiness" generated (which Kant suggests can only be evaluated by experience). Morality is not an exercise in comparing and evaluating examples.

This moral system assumes that actions have qualities independent of their context. It is very hard to say what part of an action is part of the context and what is an inherent aspect of the action. Would the defensive use of deadly force be moral? Is the aspect of self-defense part of the context of the action (and thus not admissible in the assignment of morality) or is it part of a larger aspect? Can we evaluate defensive force as an independent coherent action? There needs to be a good system to define how broadly an action can be conceived.

If we allow broadly defined actions (such as the defensive use of force), then the condition of a priori judgment becomes meaningless. All you have to do is define the context into the action. If you keep to the simplest form of an action, it becomes hard to ignore the common exceptions to the evaluation. Consider the morality of three different versions of the same scenario. In deference to the most common attack on Kant, I will use the protection of a Jew from the Nazis as the example.

Imagine you are hiding a Jewish child from discovery and a potential sentence to a concentration camp. You get a knock on the door and an SS officer asks you, directly, whether you are harboring a Jewish child. Being a dedicated adherent to Kantian moral philosophy, you consider the morality of lying to the officer. What action do you take?

- 1. Lying to protect a child from death.**
- 2. Lying to protect a person**
- 3. Lying**

Each of these options has different implications. It is commonly thought that you should lie to protect an innocent child. But this may be considered context. It is debatable whether you should lie to protect just any person. (Think about Oliver North.) Finally, few people would defend lying as moral.

You can see how all of this just depends on how you phrase the moral questions. You can use this in debate very easily. In CX, you can ask what it means to exclude context. Many circumstances where the context seems to have moral relevance are readily available. Is it moral to keep a person in a small room against their will? What if they are a convicted felon? It all depends on what you consider part of the context. The elimination of experience and examples from moral evaluation becomes very troublesome at that point.

Some interpret Kant a little differently based upon other statements he makes about the nature of reasoned judgment. Maybe Kant does not exclude the use of experience to define what actions should be evaluated, but you can not use experience to designate the action as moral or not moral. The theory is dangerously unclear about this point. It is obvious that the moral judgment of an action can be based upon the explicit outcome in a certain instance, but the amount that experience serves as the basis for the expectation is unclear.

It would be impossible to exclude all notions of causality. Kant does refer to the effects of an action when he evaluates the morality of those actions. He does not refer to the effects that are dependent upon a specific context. We will get more into this when Kant elaborates his moral theory but, for now, think about the problems caused by unclear definitions of what is context and what is an inherent quality of an action.

Central to Kant's thought is the question of free will. He distinguishes between actions based upon involuntary desires and actions based upon reason.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.12-3 [6:212]  
So if a pleasure necessarily precedes a desire, the practical pleasure must be called an interest of inclination. But if a pleasure can only follow upon an antecedent determination of the faculty of desire it is an intellectual pleasure, and the interest must be called an interest of reason; for if the interest were based on the senses and not on pure rational principles alone, sensation would then have to have pleasure connected with it and in this way be able to determine the faculty of desire.

In a round about way, Kant is suggesting that freedom from base desires is a necessary condition for moral decisions. If a person's actions were determined by the impulses of desire, rather than free will and reason, the actions would contain no moral quality. This is similar to a long line of moral arguments that requires freedom for morality. If I am forced to give money to the poor (for instance by a big burly altruist who takes my money), that gift is not a moral action. I must actively choose to do good for the act to be moral.

This is relevant to the concept of legal paternalism. By legislating that a person must perform some action, the action is undertaken because of the law; not because of the inherent morality of the action. The morality of the action is replaced by a prudential fear of punishment. Where should laws exist then? Obviously, laws should protect people from others who decide murder is moral. But, should the government require charity or public service under penalty of law?

Kant extends the traditional distinction between coerced choice and free choice to explain actions taken for desire, from those taken for a sense of reason. If I act purely based upon my desire, I am chained by natural impulses. Only if I can choose to ignore these desires am I free to make moral choices.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.13 [6:213]

The faculty of desire in accordance with concepts, insofar as the ground determining it to action lies within itself and not in the object, is called a faculty to do or to refrain from doing as one pleases. Insofar as it is joined with one's consciousness of the ability to bring about its object by one's action it is called choice.. The faculty of desire whose inner determining ground, hence even what pleases it, lies within the subjects reason is called the will. The will is therefore faculty to desire considered not so much in relation to action (as choice is) but rather in relation to the ground determining the action. The will itself, strictly speaking, has no determining ground; insofar as it can determine choice, it is instead practical reason.

To simplify this statement consider this picture.

Will ð choice ð action.

Will has no basis; it is not determined by anything. Will is free. If it was based upon some other condition, then, it would not be free and would not have moral significance. A moral action is one where my will elects to act morally. If my will was not presumed to be free, but was instead based entirely upon some condition (for example self-preservation), then because the will was determined, it would not be moral. Freedom is absolutely essential to morality and Kant argues that nothing can come before or cause will in the above picture.

To clarify, Kant refers to actions based on involuntary impulses such as inclinations and actions based upon free will.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.13 [6:213]

That which can be determined only by inclination . . . . would be animal choice . . . . Human choice, however, is a choice that can indeed be affected but not determined by impulses, and is therefore of itself . . . . not pure but can still be determined to actions by pure will. Freedom of choice is this independence from being determined by sensible impulses; this is the negative concept of freedom.

The first condition of moral choice is, therefore, to be able to consciously will your actions. This only allows for morality; it does not guarantee that all free choices are moral. The positive concept of freedom is the ability to exercise free choice in a moral fashion.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.13 [6:214]

The positive concept of freedom is that of the ability of pure reason to be of itself practical. But this is not possible except by the subjection of the maxim of every action to the condition of its qualifying as universal law. For as pure reason applied to choice irrespective of its objects, it does not have within it the matter of the law; so, as a faculty of principles . . . there is nothing it can make the supreme law and determining ground of choice except the form, the fitness of the maxims of choice to be universal law.

Kant introduces some pretty big concepts in this quote. The first important implication in this quote is the ultimate reason for this lofty excursion into the nature of will. If only the will is actually free, then only the will has moral weight. The action is determined by conscious choice. The choice is determined by the free will. Morality only makes sense as a quality of a will.

This is quickly interpreted as judging based upon the intent of an action. But, it is more specific than that. Kant suggests that free will decides based on (but not determined by) maxims. The maxims that a will expresses are the material that is eligible for moral evaluation. The tests for morality, the test for appropriate use of will, are tests of maxims. He states the actual test for maxims is the test of universal law, which he will develop in much more detail. At this point, you should take a couple of fundamental arguments away from Kant's theory:

**1. Only will is truly free; that is only will is not determined by anything else.**

**2. Because only will is free, only the will is attributable as moral or immoral by judging the maxims that a will accepts.**

Kant uses the laws of nature as a comparison to moral laws. By this he means to say that, in nature, there are certain definite rules. If you drop a rock, it will fall. The rock has no choice in the matter. The rule that applies is already defined regardless of any will the rock may have. A person, however, can choose. People's decisions are not determined like a rock's destiny. This freedom from determination makes human decisions potentially moral.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.14 [6:214]

In contrast to laws of nature, these laws of freedom are called moral laws. As directed merely to external actions and their conformity to law they are called juridical laws; but if they also require that they (the laws) themselves be the determining grounds of actions, they are ethical laws; and then one says that conformity with juridical laws is the legality of an action and conformity with ethical laws is its morality. The freedom to which the former laws refer can be only freedom in the external use of choice; but the freedom to which the latter refer is freedom in both the external and internal use of choice, insofar as it is determined by laws of reason.

Kant has already stated that moral actions are based upon maxims; now he clarifies what types of maxims exist. The easiest maxims to see are juridical laws. These are the edicts of a state like speed limits and prohibitions on murder. They are passed by a body of people and are enforced irrespective of an individual's choice of those maxims. I can not choose to ignore a juridical law. Since the authority to define these laws is external to the individual (that is, the juridical laws are created and enforced by people or groups other than the individual who lives under them), conformity to juridical law is not an ethical decision.

Ethical laws are defined within each person; not by some distant policy makers. Each person is free to choose to follow the laws they create for themselves; so ethical laws are the basis for morality. The distinction between legality and morality is the lawgivers in each instance. Because the definers of legality are separate from the will of any particular individual, following juridical law is not as free as following laws of your own creation. Morality stems from personal law-giving, the giving of ethical laws.

Up to this point, Kant has presented his entire theory that morality is based upon the independence of a free will. What is freedom? How do we know that it exists? Some religious sects and philosophical traditions suggest that all choices are determined by forces we cannot understand. In modern social discussions, the possibility that choices are shaped by chemical factors is a new form of this argument against the assumption of free will. If, indeed, decisions are determined by chemical impulses, what room is there for morality?

Kant argues that one can do nothing else but assume that people are free. I guess if you assume anything else he is out of a job . . .

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.14 [6:221]

The concept of freedom is a pure rational concept, which for this very reason is transcendental for theoretical philosophy, that is, it is a concept such that no instance corresponding to it can be given any possible experience . . . . But in reason's practical use the concept of freedom proves its reality by practical principles, which are laws of a causality of pure reason for determining choice independently of any empirical conditions (of sensibility generally) and prove a pure will in us, in which moral concepts and laws have their source.

In a stunning feat of question begging, unparalleled until the invention of novice LD, Kant suggests that freedom exists because practical reason (read moral reason) exists; after having argued that moral reason exists because freedom exists. Go figure . . . . We will ignore that little mix up, OK?

Kant continues to present his vocabulary by suggesting that, because morality is the choice between an inclination and other moral maxims, these maxims deserve a special name to keep the prose clean.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.14 [6:221]  
 On this concept of freedom, which is positive . . . are based unconditional practical laws, which are called moral laws. For us, whose choice is sensibly affected and so does not of itself conform to the pure will but often opposes it, moral laws are imperatives (commands or prohibitions) and indeed categorical (unconditional) imperatives.

This paints an image of moral decision making in a contentious environment. Most decisions a person will make are conflicts between sensual inclinations and moral imperatives. A person is being pulled in two different directions, to act situationally to preserve pleasure or universally to preserve morality. A moral choice is one that wills to act universally and ignores the inclinations to strive for pleasure. Do these characteristics remind you of any religious doctrines to which you may have been exposed?

This is an optimistic view in that it suggests that people can succeed in suppressing their "base impulses" in order to act morally. But, it also seems to dramatize decision making. Many object to the idea that all choices are conscious decisions based upon the evaluation of moral maxims. Some argue, instead, that choices are made more based upon habit and sub-conscious processes. In this way, the Freudian revolution in psychology really challenged the field of moral philosophy.

### **The Categorical Imperative**

Kant spends more time defining his terms and clarifies what a categorical imperative actually is.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.14-5 [6:221]  
 By categorical imperative certain actions are permitted or forbidden, that is, morally possible or impossible, while some of them or their opposites are morally necessary, that is obligatory. For those actions, then, there arises the concept of duty, observance and transgression of which is indeed connected with a pleasure or displeasure of a distinctive kind (moral feeling), although in practical laws of reason we take no account of these feelings . . . .

In LD we often see the term ought, and the definition of a moral obligation presented by the affirmative. This presents a way to define and defend moral obligations. Kant suggests that the source of the obligations are categorical imperatives. The language is a little tricky though. Not all categorical imperatives create moral obligations. The opposite of something that is morally forbidden is morally obligated. What is the opposite of morally permitted? Surely not all that is permitted is obligatory. The affirmative who uses this scheme of upholding the term moral obligation must prove that the categorical imperative they present shows obligation, not simply permissibility.

These categorical imperatives are based upon the inherent qualities of actions and, thus, present the problems I discussed earlier in the separation of inherent and context contingent aspects of an action.



Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.15 [6:222]  
 A categorical (unconditional) imperative is one that represents an action as objectively necessary and makes it necessary not indirectly, through the representation of some end that can be attained by the action, but through the representation of this action itself (its form) and hence directly.

The analysis of the inherent characteristics is a compelling argument, especially in LD. Most often, our resolutions do not present much of a context, but instead ask us to look at some action in a universal sense. In this respect, most LD resolutions leave nothing but a priori judgments about actions. If you can get past the problem of defining the inherent (rather than contextual) aspects of the resolution, this can be compelling. Lets look at a few examples.

The use of the term "ought" in a topic involves, in Kantian terms, the comparison of moral duties. A topic might compare two social practices. A resolution has compared the principle of majority rule to the principle of minority rights. One way to analyze these principles (and only one way among many different strategies) was to look at the duties that compelled each principle. Maybe majority rule implies a duty to democratic law making and minority rights implies a duty to protect certain people in society. Anyway, the categorical imperative definition of ought provides a very clear framework for an affirmative or negative case. The transformation of action to its compelling maxim allows this sort of analysis. Remember Kant's theory of causality:

Will ð choice (maxims) ð actions.

All actions will logically have a maxim which compel them. These maxims allow Kant's theory to effectively evaluate LD resolutions that compare actions.

A second type of resolution, that is conducive to Kantian analysis, is the factual resolution that uses the evaluative terms "moral" or "immoral". These short resolutions require direct application of some moral theory. Take, for example, the topic "the possession of nuclear weapons is immoral". The topic requires a moral theory for proof of immorality, and the categorical imperative seems an accessible theory to apply.

Aside from these two types of resolutions, there are some resolutions that do not seem conducive to applying Kant. Specifically the resolutions (that have become infrequent lately) that use the term "justified" tend to not present strong opportunities for Kantian arguments (at least on the affirmative). This is because of the nature of the term justified. We use this word when context is seen as relevant to the evaluation of an object. For example, the resolution "the deliberate use of deadly force is justified as a response to physical abuse". The resolution is asking whether the context, a history of physical abuse, is a condition that allows or excuses the questionable use of deadly force. We usually do not talk of altruism or public service as being justified. That is because the term justified has this connotation of exculpation or release from guilt. A Kantian affirmative would not work because the resolution is worded so that you have to take context into account on the affirmative. Maybe you could use Kant on the negative to argue that history does not justify force, but these resolutions are designed to make that approach unpersuasive.

Kant presents more definitional information about his use of the terms obligation and duty. People tend to define these separately but they are, in fact, intimately connected phrases.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.15 [6:222]  
Duty is that action to which someone is bound. It is therefore the matter of obligation, and there can be one and the same duty (as to the action) although we can be bound to it in different ways.

Duties generate obligations. To say that one is morally obligated is to say that a person has a moral duty to some act or inaction. These obligations can be expressed in different ways. When Kant says that we can be "bound . . . in different ways" he is referring to the fact that duties are universal but obligations are not. Obligations are derived from universal duties, but they are temporal. That is, obligations are expressions of dutiful action in the real world and obligations compel specific actions. This allows for some diversity of obligations in a system of universal morality. We all have the same duties, but we are bound to them in different ways.

Moral duties to action or inaction cover only a small number of the cases of human action. Many actions are neither morally obligated nor immoral. The gray area between actions that are morally obligatory and those that are morally forbidden is where those that are morally permissible reside.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.16 [6:223]  
An action that is neither commanded nor prohibited is merely permitted, since there is no law limiting one's freedom (one's authorization) with regard to it and so too no duty. Such an action is called morally indifferent.

This quote provides additional burdens of the affirmative to prove the term moral obligation. Kant suggests that they have to prove that an obligation exists; just saying that it does not break any moral codes is not enough. There must be a reason why not doing the action is immoral. Many debaters throw the term moral obligation around and never actually uphold it in their case. You can use this argument to clarify their self-defined burden of proof. If a person uses the moral obligation definition of ought then you can force them to prove more than acceptability. This may very well catch them off guard, and they can't complain too much since they gave the definition.

More definitions become important to Kant from his earlier arguments. Kant must define what has moral agency; that is, who is able to make moral decisions. He has answered this earlier in his discussion of freedom and morality, but he expands it to define personhood.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.16 [6:223]  
A person is a subject whose actions can be imputed to him. Moral personality is therefore nothing other than the freedom of a rational being under moral laws . . . . From this it follows that a person is subject to no other laws than those he gives to himself . . . .

This is not important as a definition of what personhood includes, but rather as a definition of what it does not include. A person is someone whose actions are completely their own. Any person whose decisions are not free of external force or determination is not free and is not, at that point, acting as a moral person. Freedom is incorporated into the term person in order to tighten up his diction. From here on out he will assume that people act upon free will (by definition of the term person).

From this, Kant starts to throw out some of the major themes he will present in his book. He recognizes that primary to any deontological theory is a system for resolving conflicts between the rules. Any system that suggests that people should act in accordance with rules must either present a single rule or a system of competing rules. This is particularly troublesome for any theory that suggests moral rules are universal and unquestionable. Kant suggests that, since moral laws are universal, there can be no limitation on universal laws. The illusion of conflict can only be reconciled by looking to the source of the obligations.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.16-7 [6:224]

A conflict of duties would be a relation between them in which one of them would cancel the other (wholly or in part). But since duty and obligation are concepts that express the objective practical necessity of certain actions and two rules opposed to each other cannot be necessary at the same time, if it is a duty to act in accordance with one rule, to act in accordance with the opposite rule is not a duty but even contrary to duty; so a collision of duties and obligations is inconceivable. However, a subject may have, in a rule he prescribes to himself, two grounds of obligation, one or the other of which is not sufficient to put him under obligation, so that one of them is not a duty. When two such grounds conflict with each other, practical philosophy says, not that the stronger obligation takes precedence, but that the stronger ground of obligation prevails.

This becomes very tricky business. How should you compare the basis of obligations? Does an obligation to self have a stronger grounding than an obligation to others? What is the ground for an obligation? It seems that the definition of a ground for an obligation is just as problematic (if not more) as the designation of the actual maxim you should test. What are the different grounds for obligation? Consider the following bases for obligation: Obligations can be based upon contract, community, self, practice or history. All of these seem to be firm foundations for obligations at times.

One way to prioritize obligations is the source of the obligation: law or morality. Laws are given or passed by external law makers but moral laws are considered by internal law making. Which type of obligation is stronger, legal or moral?

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.17 [6:224]

Obligatory laws for which there can be an external lawgiving are called external laws in general. Those among them that can be recognized as obligatory a priori by reason even without external lawgiving are indeed external but natural laws, whereas those that do not bind without actual external lawgiving (and so without it would not be laws) are called positive laws. One can therefore conceive of external lawgiving which would contain only positive laws; but then a natural law would still have to precede it, which would establish the authority of the lawgiver (i.e., his authorization to bind others by his mere choice).

An example of the comparison of grounds for obligation is explained in the difference between natural and positive law. Since natural law can be derived a priori and positive law can not be, natural law takes precedence. This may be applicable in a more general sense. Kant argues that a priori obligations are the strongest foundation for all obligations and are the only source for pure moral obligations. The first way to resolve conflict of obligations is, therefore, to weigh a priori obligations as having greater weight than other obligations.

Another method is the categorical imperative. The infamous categorical imperative serves as a way to test for objective obligations; objective obligations are more important than subjective ones.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.17 [6:225]

The categorical imperative, which as such only affirms what obligation is, is: act upon a maxim that can also hold as a universal law. You must therefore first consider your actions in terms of their subjective principles; but you can know whether this principle also holds objectively only in this way: that when your reason subjects it to the test of conceiving yourself as also giving universal law through it, it qualifies for such a giving of universal law.

Here we begin the application of Kant's moral philosophy. Each individual should act in ways that are universal. More specifically, the maxims that you use to express your will must be universal. The universality of these maxims make the maxims objective.

The categorical imperative is only useful for free persons who can consider the universality of their actions. In this, Kant looks back at the presumption of freedom. He directly states what he avoided earlier. Neither reason nor experience can prove the existence of freedom. We should just assume it to be true.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.17 [6:225]

But in wondering at an ability of our reason to determine choice by the mere idea that a maxim that a maxim qualifies for the universality of a practical law, one learns that just these practical (moral) laws first make known a property of choice, namely its freedom, which speculative reason would never have arrived at, either on a priori grounds or through any experience whatever, and which, once reason has arrived at it, could in no way be shown theoretically to be possible, although these practical laws show incontestably that our choice has this property.

If you can't prove that freedom exists, all you have to do is argue that it "incontestably" exists. The need to analyze moral maxims leads to a dichotomy between legality and morality.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.17-8 [6:225]

The conformity of an action with the law of duty is its legality; the conformity of the maxim of an action with a law is the morality of the action. A maxim is the subjective principle of action, a principle which the subject himself makes his rule (how he wills to act). A principle of duty, on the other hand, is a principle that reason prescribes to him absolutely and so objectively (how he ought to act).

You might want to read that quote again. Analysis of an action can determine legality, but only the analysis of an intention can determine morality. It is the objective evaluation of intentions that allows for the use of the word ought. Kant is going to use this term "maxim" a lot so it is important to recognize the components and implications of this word. Maxims are the intentions produced by a free will. These two aspects (freedom and intentions) are vital to Kant's theory.

These maxims are the basis for moral evaluation, now that we can separate out the legal implication of action. The law of morality looks at the objectivity of intentions, or freely chosen maxims.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.18 [6:225]  
The supreme principle of the doctrine of morals is, therefore, act on a maxim which can also be universal law. Any maxim that does not qualify is contrary to morals.

The trick is to define what the requirements are for classifying something a universal law. This provides a first-level answer to the question of what is morality. Morality is the adherence to universal law. The second level question is what can be called a universal law. When you debate someone that is using Kant's theory, remember the different levels of analysis. You can move beyond debating what morality is; you can debate what universality means.

The concept of universality is a central theme in Western philosophy. Recently, this theme has come under attack by many schools of thought. LD has an ingrained resistance to non-universalist positions, and I would never suggest using them in a case. But, consider for a moment the arguments against universality as a basis of morality.

The entire basis of universality is the ability for a person to abandon the particular biases that each of us uses when making decisions. What is different about the information I derive from experience and the knowledge that I derive based upon "reason"? Can reason be defined independent of experience and bias? Think for a moment about all of the reading you have done on theories of natural law. These authors have spent a lot of effort to assert what is reasonable, but there is very little effort to prove what reason actually is. Some theorists argue that it is impossible to separate bias from reason; therefore, universality is a mask for the entrenchment of a single biased perspective. This is not to say that there can be no standards of morality, but these standards should acknowledge that each person has their own sense of reason.

Again, this is not a viable LD argument (on the national circuit anyway). People do not want listen to criticisms of rationality and they will not vote for such a criticism. But, it is essential to recognize the existence of the attacks upon universality. When you begin looking at these subjects in a university setting, you will find that people will not discard these arguments so easily. At this point, you should just be aware of alternative conceptions of rationality and subjectivity.

Kant brings together his model of law-giving by describing the different aspects of an action and noting which aspects are open for moral evaluation.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.20 [6:218]

In all lawgiving (whether it prescribes internal or external actions, and whether it prescribes them a priori by reason alone to by the choice of another) there are two elements: first, a law, which represents an action that is to be done as objectively necessary, that is, which makes the action a duty; and second, an incentive, which connects a ground for determining choice to this action subjectively with the representation of the law. Hence the second element is this: that the law makes duty the incentive. By the first action is represented as a duty, and this is, of practical rules. By the second the obligation so to act is connected in the subject with a ground for determining choice generally.

The attempt to define whether someone is moral or not is problematic. Morality involves intentions to follow duty. If a person acts in a seemingly noble way, you can not tell if they are noble. They may be acting in a noble fashion, without actually acting based upon duty. Is that person walking an old lady across the street because he wants to help, or is he doing it to look good to others? The first intention is based upon recognition of a duty to help others, the second is an action based upon self-interested inclination. Really, the only person that can know if an action is being done morally is the person who is acting.

Kant clarifies the difference between morality and following the law.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.20 [6:219]

That lawgiving which makes an action a duty and also makes this duty the incentive is ethical. But that lawgiving which does not include the incentive of duty in the law and so admits an incentive other than the idea of duty itself is juridical. It is clear that in the latter case this incentive which is something other than the idea of duty must be drawn from pathological determining grounds of choice, inclinations, and aversions, and among these, from aversions; for it is a lawgiving, which constrains, not allurements which invites.

Laws really confuse the ability of people to discern the morality of other individuals. The adherence to law for fear of punishment is not a moral decision. In Kant's view, a person should resist the urge to steal because stealing is wrong. The avoidance of stealing because of criminal sanctions is really a self-interested decision based upon inclination. To follow laws for fear of punishment is simple, base legality whereas the following of rules, because of the recognition of their status as moral rules, is an ethical decision.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.17-8 [6:225]

The mere conformity or nonconformity of an action with law, irrespective of the incentive to it, is called the legality (lawfulness); but that conformity in which the idea of duty arising from the law is also the incentive to the action is called its morality.

The independence of legality from intention allows us to define the actions of others as legal or not. Legality does not require an understanding of why a person acts, it only requires recognition of the action itself. This leaves one major moral question open. Do you have a moral obligation to follow the positive law of a state (as in the actual policies and legislation passed by a government)? This would entail having an internal rule to follow external rules. (. . . just something to think about . . .)

The difference between morality and legality allows for a theory of contracts.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.21 [6:220]

It is no duty of virtue to keep one's promises but a duty of right, to the performance of which one can be coerced. But it is still a virtuous action (a proof of virtue) to do it even where no coercion may be applied. The doctrine of right and the doctrine of virtue are therefore distinguished not so much by their different duties as by the difference in their lawgiving, which connects one incentive or the other with law.

The distinction between right and virtue will be the organizing principle of the rest of this book. Some laws are justified for coercion, that is laws passed by external authorities. The doctrine of right defines the instances where external law giving, and threat of punishment, are justified. The doctrine of virtue includes an analysis of the principles regulating internal lawgiving; that is, personal morality. The difference in lawgiving authority will determine which arguments are relevant in which instances.

The principles which regulate the creation of public law are very different than those that regulate personal morality. This is important in LD because many topics list an agent of action, either an individual or a government. The former are regulated by the doctrine of virtue; the latter by the doctrine of right. This also introduces a political component into Kant's theory. A common misconception of Kant is that he does not talk about political action in his moral theory. He does distinguish between the moral agency of an individual and the lawgiving authority of the state, but he does not recognize that rules apply to each. The relationship between ethical and juridical laws is close, but there are differences. Remember that obedience to law, for fear of punishment, is not really a moral action. This does not mean that there are no principles that regulate public lawgiving. The next chapter of this book is dedicated to the doctrine of right which does look at the principles which regulate public laws. Afterward, I will return to the traditional moral theory which defines how individuals can be moral. Pay careful attention to the similarities and differences between these two doctrines and consider the differences which can be attributed to the different lawgiving authorities.

### Discussion Questions

1. How can you prove that people have free will?
2. How do you define a maxim on which a choice is made?
3. How do you know if a maxim can be universal?

**Resolutions**

1. Resolved: that an individual's obligation to him or herself ought to be valued above an individual's obligation to his or her community.
2. Resolved: that capital punishment is justified.
3. Resolved: that the possession of nuclear weapons is morally justified.



## THE DOCTRINE OF RIGHT

### Freedom and Coercion

Kant begins, oddly enough, with the more complicated application of his moral theory, the doctrine of right. In the doctrine of right, Kant lays out a model for evaluating the laws that external laws givers can make. Those are the laws that a legislature can pass or a ruler can enact; that can force a separate individual to comply. The doctrine of right is really about the legitimacy of coercion, and what laws possess that legitimacy.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.23 [6:229]  
The sum of those laws for which an external lawgiver is possible is called the doctrine of right.

This doctrine is most useful in LD to evaluate the content of legislation and the actions of government. The doctrine only applies when one agent is coercing another. Therefore, in cases where an individual is to decide their own actions, the doctrine of right does not apply. At the same time, in instances where coercion is occurring, the doctrine of right does reign.

The evaluation of laws is a tricky business. The evaluation of laws requires a standard outside of the legal system. What standards can we use to evaluate the legal system other than morality? This is the linkage between moral theory and legal theory; Kant will argue that, at the base of the legal system, there actually are principles that stand above and before the actual laws under which we live. LD has assumed the independent justification of law. We are often called upon to decide whether a law is justified, exactly the question Kant wants to evaluate.

Others do not feel that such discourse is useful. Many argue that the attempts to find a justification for law undermine the social order. If there is an independent justification for laws (that is, if there is a non-codified principle that can be used to evaluate codified laws), then many people will find different applications of the higher principle. For instance, if there is a higher law that justifies civil disobedience then how can a social order survive? I think speeding laws are unjust; maybe I just won't pay my fines. Clearly, this is not a sustainable system.

If all subjective, higher principles are rejected as contradictory to the social order; what is left? All that one can do is obey. If we accept that, there is little possibility to change the laws. What should a person do in the face of a patently offensive law? Should they follow laws they consider immoral or should they challenge the basis of the social order? Neither extreme scenario (social disintegration or legal oppression) is acceptable. What is the acceptable mix of the two principles of legal obligation and moral obligation?

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.21 [6:229-30]

Like the much cited query "what is truth?" put to the logician, the question "what is right?" might well embarrass the jurist if he does not want to lapse into a tautology or, instead of giving a universal solution, refer to what the laws in some country at some time prescribe. He can indeed state what is laid down as right, that is, what the laws in a certain place and at a certain time say or have said. But whether these laws prescribed is also right, and what the universal criterion is by which one could recognize right as well as wrong, this would remain hidden from him unless he leaves those empirical principles behind for a while and seeks the sources of such judgments in reason alone, so as to establish the basis for any giving of positive laws (although positive laws can serve as excellent guides to this).

There are some wonderful opportunities for CX questions that evolve from this line of argument. If someone argues that there are standards that serve to legitimate or delegitimize laws, what are these standards? Who decides when legitimacy is lost; an individual person or the government? If the individual decides, is this a stable basis for social order? If the government decides, how can we change an unjust government?

Kant starts this discussion with a general proposition of the doctrine of the right.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.24 [6:230]

Any action is right if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with universal law

This is a loaded statement. On face, this is a presentation of the equal maximum liberty principle. But, there is a catch. What does it mean to be equal "in accordance with universal law"? This may provide auxiliary limitations to the maximum liberty principle; there must be additional limitations inherent in the adherence to universal law.

The equal liberty principle is fairly common; yet, no one agrees on what it means. Is there an equal freedom of expression that allows for hate speech? Is there an equal liberty to property that disallows taxation? Is there a maximal liberty that requires public service? All these ideas evolve from different authors who disagree over the meaning of the seemingly innocuous position of equal maximum freedom.

Beyond the difficulties inherent in the definition of equal freedom, Kant presents the idea of additional limitation inherent in universal law. What does this mean? He will work on clarifying this concept but, as many people do, he will assume many things that he finds simple are clear. Not everyone will feel that his propositions will be as clear or easy to apply as does Kant himself.

The universality principle of the doctrine makes it a moral argument and, in Kant's theory, morally obligatory.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.24 [6:231]  
Thus the universal law of right, so act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law, is indeed a law that lays an obligation on me, but it does not at all expect, far less demand, that I myself should limit my freedom to those conditions just for the sake of this obligation; instead, reason says only that freedom is limited to those conditions in conformity with the idea of it and that it may also be actively limited by others . . .

Remember that the doctrine of right only looks at the requirement of external lawgiving. It does not look at the implications of individual personal decisions. He wants to argue, at this point, that legislators are subject to the conditions of universal law. The question of individual obligation to external law is a different question.

A fundamental contradiction is present in any theory that suggests full autonomy and the need for legal limitations. Kant recognizes this and deals with the question directly. If freedom is good, and all things that negate freedom are bad, then how can coercion ever be justified? On face, it seems that coercion is at best a justified evil. Kant suggests that coercion has a moral quality, that is it is not inherently bad, if that coercion contributes to the protection of a greater freedom.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.25 [6:231]  
Resistance that counteracts the hindering of an effect promotes this effect and is consistent with it. Now whatever is wrong is a hindrance to freedom in accordance with universal laws. But coercion is a hindrance or resistance to freedom. Therefore, if a certain use of freedom is itself a hindrance to freedom in accordance with universal law (i.e., wrong), coercion that is opposed to this (as a hindering of a hindrance to freedom) is consistent with freedom in accordance with universal laws, that is, it is right. Hence there is connected with the right by the principle of contradiction an authorization to coerce someone who infringes upon it.

This may seem strange for people who confess some preconceptions about Kant. Legislating a restriction of one person's rights in order to protect other people's freedom is using a person as a means to an independent end (depending on how you look at it). That principle is not a part of the doctrine of right, it is a principle of internal lawgiving. In resolutions that suggest governmental restriction of rights, restrictions are justified based upon the necessity of universality. If someone harms another, in a way that denies the universal law or equal rights, coercion is justified.

In that Kant's doctrine of right allows for the curtailment of some freedoms in order to protect the system of freedom, a further categorization of rights is needed. Kant adopts the language of natural rights to compare rights derived from a priori principles to the positive rights created by particular legislatures.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.29 [6:237]  
As systematic doctrines, rights are divided into natural right, which rests only on a priori principles, and positive (statutory) right, which proceeds from the will of the legislature.

This provides a system for comparison but does little to resolve disputes between the two principles. The contractual authors are useful for discussing disputes between natural and positive law, but the central theme remains important. The conflict between natural and positive rights systems is a conflict between subjective principles of justice and codified principles of legality. Laws can be unjust, but so can individual perceptions of natural law. Many political philosophies can be largely characterized as an attempt to find some niche between radical naturalist theories and oppressive positivist theories. Clearly, a pure form of each is unstable or, at least, unpersuasive as discussed earlier.

Kant presents a more distinctive prioritization principle in the form of a theory of the source of rights. Remember that Kant argued briefly that, in conflict situations, it is best to uphold a moral duty with the strongest grounding. Kant adopts a similar method for prioritizing rights.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.30 [6:237]  
The highest division of rights, as (moral) capacities for putting others under obligations (i.e., as a lawful basis for doing so) is the division into innate and acquired right. An innate right is that which belongs to everyone by nature, independently of any act that would establish a right, an acquired right is that for which such an act is required.

At first glance, this seems to prioritize natural rights over positive rights. In a closer reading, it is not so clear. Natural rights, in the sense of not requiring legislative actions, are more important than legislative created rights. Is this the same as a priori justification? The language used here sounds a lot more like a traditional contract theorist than Kant's normal bias toward moral discourse. In effect he is adopting contractual arguments for his moral argument.

The major question that remains is whether any right is innate. Is the freedom of speech innate? Would it exist without a legislature? The deeper question is what does it mean for a right to exist without a legislative act protecting and enforcing it? The easiest answer is that a non-legislative right still creates moral obligations. But, in that case, why would it be an explicit component of doctrine of right? A better answer may lie in the fact that innate rights create an obligation, or a system to create legislative expression of these rights. The legal implication of natural rights is that a legal system is morally obligated to enforce natural rights (even if it has not accepted them).

At this point, you should be recalling our discussion of the implications of presenting a pure natural philosophy. Does the moral obligation to recognize natural rights justify revolution by unhappy parties? That question is left open . . . for now.

Kant, instead, moves on to clarify the innate rights claims of each individual within the doctrine of right.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.30 [6:237-8]  
Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity. – This principle of innate freedom already involves the following authorizations which are not really distinct from it (as if they were members of the division of some higher concept of right) innate equality, that is, independence from being bound by others to more than one can in turn bind them; hence a human being's quality of being his own master . . .

This innate right to freedom, also expressed in terms of independence, is the most legitimate foundation for rights in a society. The conflict between rights should come down to which right is most grounded because of this basic claim to freedom. This can still be troublesome. Expressive freedoms create a unique problem in that the dispute is resolved based on who you decide is the victim. A victim of hate speech may deserve independence from that speech, but the speaker deserves freedom from interference in his or her speech. Which person's claim to freedom is more legitimate?

The doctrine of right requires that individuals be legally obligated to some external source of authority which can pass laws. To this end, there must be an obligation to obey positive laws as expressions of natural or a priori principles. It is not stable to suppose that a society can survive based upon each individual enforcing their own rights.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.45 [6:256]  
Now, a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external and therefore contingent, since that would infringe upon freedom in accordance with universal laws. So it is only a will putting everyone under obligation, hence only a collective general (common) and powerful will, that can provide this assurance. – But the condition of being under a general external (i.e. public) lawgiving accompanied with power is the civil condition. So only in a civil condition can something external be mine or yours.

Like Locke, Kant derives a key source of legitimacy for coercion from the desire to own property. That is what Kant means by the words "something external". Property rights are only stable when some central authority decides where property rights exist and can enforce that system. Kant extends the needs for property protection as an a priori necessity for social living and, therefore, as a basis for coercion. The natural desire for property requires positive laws to resolve disputes.

Just in case you are not completely confused about Kant's stance on the natural/positive rights debate, Kant suggests that there is a natural moral duty to follow positive law.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.51 [6:264]  
A civil constitution, though its realization is subjectively contingent, is still objectively necessary, that is necessary as a duty. With regard to such a constitution and its establishment there is therefore a real law of natural right to which any external acquisition is subject.

Kant makes an important distinction between the "realization" of the constitution and its necessity. Kant suggested that some constitution was necessary a priori and, hence, there is an obligation to create such a constitution. The objective duty is to the system of the rights protection in the form of a constitution; not to a particular law. In this manner, people in a state of nature are obligated to create a constitution but people in a constitution are capable of challenging the particular expression of the contemporaneous constitution.

Kant, like Locke, looks at property as the source of the obligation to create a government. At the same time, Kant sees the need to own property as particularly external. Remember that Locke suggested that property extended to one's own body. Kant suggests, to the contrary, that since property rights only regulate the possession of external objects, a person can not own themselves.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.56 [6:270]  
An external object which in terms of its substance belongs to someone is property, in which all rights in this thing inhere and which the owner can, accordingly, dispose of as he pleases. But from this it follows that an object of this sort can be only a corporeal thing (to which one has no obligation). So someone can be his own master but cannot be the owner of himself – still less can he dispose of others as he pleases – since he is accountable to the humanity in his own person.

The impossibility of owning another person and, thus, the impossibility of controlling another person as property, is an easy argument to sell. The applications of this to self-ownership are a bit troublesome. What does it mean to be responsible to the "humanity" of your own person? Can someone not decide for themselves what is dignified? Can the state step in to make sure that we respect our own dignity?

Kant does not want to suggest that a person can have no control over the decisions of another; this would entail the complete impossibility of coercion. Kant suggests that a person can control the decision of another if there is a contract between the people.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.57 [6:271]  
My possession of another's choice, in the sense of my capacity to determine it by my own choice to a certain deed in accordance with the laws of freedom (what is externally mine or yours with respect to the causality of another), is a right (of which I can have several against the same person or against others); but there is only a single sum(system) of laws, in accordance with which I can be in this sort of possession.

The sole basis for coercion is contract rights. Kant's analysis starts here with an explanation of how one person can possess a right over another person. This is still a philosophically personal interaction and it only regulates the external lawgiving authority of different individuals. This can serve as the basis for a future state and smart money is on the fact that it will. In this way, Kant is a traditional contractual theorist when it comes to a theory of political legitimacy.

Even within the context of contractual rights, there are limits upon what a person can rightfully contract. Similar to other contractual theories, Kant suggests that principles outside of contracts can actually regulate which contracts are legitimate. These principles are very similar to other contractual authors' use of natural rights.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.57 [6:271]  
So too, I cannot acquire a right against another through a deed of his that is contrary to right; for even if he has wronged me and I have a right to demand compensation from him, by this I will still only preserve that is mine undiminished but will not acquire more than what I had previously.

Any good LDer will see the logical question to ask at this point: How do we determine what makes a contract "contrary to right"? The earlier arguments regarding the natural/positive rights distinction, as well as the requirement to respect the humanity in persons, may give us some idea of what is required. These arguments are still very hard to apply. The discussion of the specific limitations that the doctrine of right places upon interpersonal contracts is vital to the effectiveness and usefulness of the doctrine of right.

On an interesting side-note, Kant suggests a line of inquiry that a philosopher named John Rawls would run with. Kant suggests that a priori reasoning will define interpersonal justice as well as distributive justice.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.78 [6:296-7]  
If by natural right is understood only non-statutory, hence simply right that can be cognized a priori by everyone's reason, natural right will include not only the justice that holds among persons in their exchanges with one another but also distributive justice, insofar as it can be cognized a priori in accordance with the principles of distributive justice how its decisions would have to be reached.

Rawls creates a wonderful tool in order to judge the a priori requirements of distributive justice: the veil of ignorance. This veil of ignorance in the original position serves as a very developed way to interpret and apply Kant's requirement for a priori reasoning (See LD POSITIONS #2: Distributive Justice for a critique of this and other aspects of Rawls' theory).

Kant conceptualizes the requirements for rightful authority in the idea of public justice. Justice includes all of his requirements for external authority and nurtures an environment that allows individuals to freely develop. Notice the language of this passage; Kant wants a rightful condition that allows for all to "enjoy" their rights.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.84 [6:306]  
A rightful condition is that relation of human beings among one another that contains the conditions under which alone everyone is able to enjoy his rights, and the formal condition under which this is possible in accordance with the idea of a will giving laws for everyone is called public justice.

This quote is very useful. It suggests that justice includes some guarantee of positive rights insofar as they are necessary to allow all to enjoy their rights. Kant rejects the notion that a symbolic possession of rights is sufficient to satisfy justice. Each person must be able to use those rights in order for public justice to reign. This is still a vague command. What rights deserve such protections and guarantees? One may use this argument to suggest that rights of the strong or the rich can and should be limited in order to preserve the equivalent freedom for the poor. This ties into a priori reasoning in that Kant suggests that the enjoyment of rights is proven on these grounds. Much like Rawls, Kant argues that individuals would limit their rights in order to establish a system safe enough to protect them if they sink to a disadvantaged social position.

A system that does not guarantee the enjoyment of rights is, in fact, a state of nature. In order to establish needed authority to enforce a rightful condition of public justice, people must agree to enter a civil condition.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.85 [6:306]  
A condition that is not rightful, that is, a condition in which there is no distributive justice, is called a state of nature. What is opposed to a state of nature is not . . . a condition that is social and that could be called an artificial condition, but rather the civil condition, that of a society subject to distributive justice. For in the state of nature, too, there can be societies compatible with rights (e.g., conjugal, paternal, domestic societies in general, as well as many others); but no law, "You ought to enter this condition," holds a priori for these societies, whereas it can be said of a rightful condition that all human beings who could (even involuntarily) come into relations of rights with one another ought to enter into this condition.

In this way, Kant answers the anarchist challenge. People do have a moral obligation to enter into coercive relations in order to establish a civil society. The obligation to enter into civil society justifies coercion in a public setting. In this way, there is a transition from the personal justice of pure contracts toward a public justice in a rightful condition. The moral basis for the establishment of a civil society is troubling to many anarchist theorists who argue that if people are independent by their inherent dignity, then it is unjust to limit their choices regardless of the outcome. These theorists suggest that civil society is, at best, a necessary evil; not a moral obligation.

## **Public Law**

Thus, Kant suggests a mechanism for the progression from the state of nature to the state of civil society. The impossibility of total independence necessitates a contract in order to form a coercive authority. In this case, each individual has a moral obligation to facilitate the establishment of the state.



Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.86 [6:307]  
From private right in the state of nature there proceeds the postulate of public right when you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition, that is, a condition of distributive justice.  
– The ground of this postulate can be explicated analytically from the concept of right in external relations, in contrast with violence.

The obligation to enter into civil relations with those individuals whom you have frequent contact expands Kant's theory to include the concept of public law. When people enter into civil relations, they are governed by the public law and public justice, just as in the state of nature they were under moral and contractual obligations.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.89 [6:311]  
The sum of the laws which need to be promulgated generally in order to bring about a rightful condition is public right. – Public right is therefore a system of laws for a people, that is, a multitude of human beings, or for a multitude of peoples, which, because they affect one another, need a rightful condition under a will uniting them, a constitution, so that they may enjoy what is laid down as right.

Notice the similarity in the language used here and the language used by other contractual political theorists. The concept of a united will and the necessity of publicly promulgated laws combine to form a basis for public justice. This is a broad outline of any contractual political theory. It does not go on to clarify how the will of many people are united and it, therefore, does not answer many questions regarding the centralization of power in a just political order.

Kant argues that the realization that people must be coerced in order to prevent rampant violence is possible in a priori judgment. Why do we tend to think that the state of nature is violent? Can you argue that violence is inherent in the state of nature without reference to experience, history or any other empirical data?

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.89 [6:312]  
It is not experience from which we learn of human beings' maxim of violence and of their malevolent tendency to attack one another before external legislation endowed with power appears. It is therefore not some fact that makes coercion through public law necessary. On the contrary, however well disposed and law-abiding man might be, it still lies a priori in the rational idea of such a condition (one that is not rightful) that before a public lawful condition is established individual human beings, peoples, and states can never be secure against violence from one another, since each has its own right to do what seems right and good to it and not be dependent upon another's opinion about this.

The fear of exploitation is unavoidable if you assume that people are risk averse. It is inherent in the social condition that, without centralized authority, you cannot guarantee protection. Kant is not arguing about the likelihood of violence, as Locke and Hobbes do, but instead suggests that the fear of violence is universal. Therefore, a moral obligation to prevent violence by uniting to form a civil society is a objective requirement. (In this way, the state of nature is inherently immoral.)

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.9 [6:312]  
It is true that the state of nature need not, just because it is natural, be a state of injustice, of dealing with one another only in terms of the degree of force each as. But it would still be a state devoid of justice, in which when rights are in dispute, there would be no judge competent to render a verdict having rightful force.

This creates an interesting pair of concepts. Injustice entails the presence of rights violations. Justice does not merely mean the absence of violence, as is possible in the state of nature, but also requires a judge to resolve disputes, as exists in civil society.

The uniting of individual's diverse wills in order to create the justice-establishing judge requires some very specific political institutions. The most important requirement is a legislative institution that can act as a representative of the national will.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.91 [6:313-4]  
The legislative authority can belong only to the united will of the people. For since all right is to proceed from it, it cannot do anyone wrong by its law. Now when someone makes arrangements about another, it is always possible for him to do the other wrong; but he can never do wrong in what he decides upon with regard to himself. Therefore only the concurring and united will of all, insofar as each decides the same thing for all and all for each, and so only the general united will of the people, can be legislative.

This is problematic in the natural interpretation of contractual and public obligations. Kant argued that, since no one can own themselves, no one can disrespect the inherent humanity in their own person. Insofar as that argument holds, people can do themselves "wrong". Kant is selecting not to apply this obligation to humanity, to the will of a nation, or to civil society. While Kant ignores the possibility of doing wrong to oneself, and the legislature is seen as a collective will, the products of the legislative will can not be said to be unjust to the society it represents. Can the same be said of legislative treatment of individual people? Can the legislature be said to do wrong to an individual citizen?

When a just government rules through a legislature, the citizens enjoy certain civil rights. These civil rights are important in the new relationship between citizens and their state.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.91 [6:314]

The members of such a society who are united for giving law, that is, the members of a state, are called citizens of the state. In terms of rights, the attributes of a citizen, inseparable from his essence (as a citizen), are: lawful freedom, the attribute of obeying no other law than that to which he has given his consent; civil equality, that of not recognizing among the people any superior with moral capacity to bind him as a matter of right in a way that he could not in turn bind the other; and third, the attribute of civil independence, of owing his existence and preservation to his own rights and powers as a member of a commonwealth, not to the choice of another among the people.

These rights to freedom, equality, and independence are contingent because they only exist in a civil context. Each citizen holds these rights as protection from the government while within the social context. To this end, people gain rights to help direct the government so that the policies can reflect the true will of the society.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.92 [6:315]

[I]t is only in conformity with the conditions of freedom and equality that this people can become a state and enter into a civil constitution. But not all persons qualify with equal right to vote within this constitution, that is, to be citizens and not mere associates in the state. Far from their being able to demand that all others treat them in accordance with the laws of natural freedom and equality as passive parts of the state, it does not follow that they also have the right to manage the state itself as active members of it, the right to organize it or to cooperate for introducing certain laws. It follows only that, whatever sort of positive laws citizens might vote for, these laws must still not be contrary to the natural laws of freedom and of the equality of everyone in the people corresponding to this freedom, namely that anyone can work his way up from this passive condition to the active one.

Kant demands equal opportunity to public office. That is, all people should have the opportunity to become legislators. Having all people as direct legislators would be a logistical nightmare in a community of any size, so representation is a must. Representation is only justified insofar as the representation is equally open to all people. This is very similar to Rawls' argument that all social positions must be open to fair equality of opportunity.

If a person is a part of the lawmaking apparatus, then they have a moral obligation to follow the laws. At the same time the laws are obligated to respect the natural freedom and equality of each person. These two propositions come into direct conflict when unjust laws are enforced. Does the obligation to follow the laws stem from public laws or from legislative authority?

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.95 [6:318-9]

If a subject, having pondered over the ultimate authority now ruling, wanted to resist this authority, he would be punished, got rid of, or expelled (as an outlaw) in accordance with the laws of authority, that is, with every right . . . . This saying is not an assertion about the historical basis of the civil constitution; it is instead sets forth an idea as a practical principle of reason: the principle that the presently existing legislative authority ought to be obeyed, whatever its origin.

In an a priori sense, the obligation to obey can not be based on historical or contextual information. Kant then suggests that all people are obligated to the current legislature, regardless of history. This is definitely not a persuasive argument in LD rounds. It is hard to sell the argument that people are obligated to unjust or oppressive regimes. In this system, the legislative ruler can do anything they feel is in the interest of the people, they are the sole judge and authority. This formulation is similar to Hobbes' Leviathan.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.95 [6:319]

Now, from this principle follows the proposition: the sovereign has only rights against his subject and no duties (that he can be coerced to fulfill). – Moreover, even if the organ of the sovereign, the ruler, proceeds contrary to the law, for example, of taxation, recruiting, and so forth, subjects may indeed oppose this injustice by complaints but not by resistance.

Hobbes used the formulation of a ruler's rights and duties in exactly the same way. The ruler is the sole authority who decides what is law and, therefore, has no legal obligation herself. The possibility that an individual can resist any law they argue is unjust is a dangerous basis for social order. What use is public law if each person can selectively ignore that law?

Kant suggests that the impossibility of a social order based upon the individual perception of justice requires a single ruler prevail to resolve outstanding disputes.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.97 [6:320]

For a people to be authorized to resist, there would have to contain a provision that it is not the highest and that makes the people, as subject, by one and the same judgment sovereign over him to whom it is subject. This is self-contradictory, and the contradiction is evident as soon as one asks who is to be the judge in this discipline between people and sovereign (for, considered in terms of rights, these are always two distinct moral persons).

Kant comes down very strongly against decentralized authority. There must be a final authority to decide conflicts of the laws. In this case, the sovereign ruler is the interpreter of laws. Kant fears that any system which allows each individual to decide whether to follow laws is contradictory. Laws entail obligation and obligations assume that one can select to ignore the law.

## International Law

After the general presentation of the rightful basis for public law, Kant discusses the implications of this law upon international relations, or the law of nations. The law of nations defines the nations acting in an international context as moral agents, similar to individuals in a state of nature. In this way, Kant can apply moral theory to political actions that do not come as the product of rational individual deliberation. Is the designation of states as moral agents appropriate given the moral theory he presented in his introduction?

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.114 [6:343]

The element of the right of nations are these: (1) states, considered in external relations to one another, are (like lawless savages) by nature in a non-rightful condition. (2) This non-rightful condition is a condition of war (of the right of the stronger), even if it is not a condition of actual war and actual attacks being constantly made (hostilities). Although no state is wronged by another in this condition (insofar as neither wants anything better), this condition is in itself still wrong in the highest degree, and states neighboring upon one another are under obligation to leave it. (3) A league of nations in accordance with the idea of an original contract is necessary, not in order to meddle in one another's internal dissensions but to protect against attack from without. (4) This alliance must, however, involve no sovereign authority (as in civil constitution), but only an association (federation); it must be an alliance that can be renounced at any time and so must be renewed from time to time. This is a right in subsidium of another and original right, to avoid getting involved in a state of actual war among the other members.

The conditions of international relations approximate the condition of individuals in the state of nature if there was not an opportunity for a civil society. The nations in this condition still have an obligation to attempt to limit the injustices, but they can not fully incorporate into a civil society. Just as the individuals have a moral obligation to enter into a civil society, the nations have a type of a moral obligation to enter into federations (still absent the sovereign).

The recognition of a war-like condition between states leads Kant to consider the doctrine of right in war. The concept of justice in war is hard to consider. War is considered an inherently unjust situation and, thus, principles regulating the war are hard to develop. Kant suggests some limits on war are needed in order to allow for the future peace.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.117 [6:347]

Right during a war would, then, have to be the waging of war in accordance with principles that always leave open a possibility of leaving the state of nature among states (in external relation to one another) and entering into a rightful condition.

The use of weapons or techniques that permanently preclude the possibility of future peace and agreements, thus eliminating the possibility of rightful federation, are illegitimate. In the deliberation about how to use the first nuclear weapon, similar reasoning was used to take Kyoto off of the short list of possible nuclear bombing sites. The executive in charge argued that the destruction of such a religious center would end any chance for peace between Japan and the United States. In reasoning similar to Kant's, this executive disallowed further consideration of Kyoto because he felt rules regulate even war.

There is an exception to this limitation upon the war powers of a state. A nation may use any means to stop unjust states. When a nation decides that another nation is incompatible with any future peace, and the antagonistic nation makes statements that are incompatible with peace, a nation has much broader moral powers to use in war.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.118-9 [6:349]

There are no limits to the rights of a state against an unjust enemy (no limits with respect to quantity or degree, though there are limits with respect to quality); that is to say, an injured state may not use any means whatever but may use those means that are allowable to any degree that is able to, in order to maintain what belongs to it. – But what is an unjust enemy in terms of the concepts of the right of nations, in which – as is the case of the state of nature generally – each state is judge in its own case? It is an enemy whose publicly expressed will (whether by word or deed) reveals a maxim by which, if it were made a universal rule, any condition of peace among nations would be impossible and, instead, a state of nature would be perpetuated.

This seems to open up all options in war against truly antagonistic nations. This was clearly the case between the socialist and capitalist camps during the Cold War. Each of the economic contingents had made statements about the incompatibility of the two economic systems. Who started it? I do not know; but the incompatibility of the two systems prevented the realistic expectation of peaceful coexistence. In this situation, anything may be justified in each systems attempt to reach peace through dominance.

The ultimate end of any war or any actions of the state should be to allow for a future peace through international cooperation. The conflict seems to be over whose peace will be achieved. I would argue that communist as well as capitalist nations sought peace. They each wanted their conception of peace and they fought over those conceptions. Each country was immoral insofar as they inhibited the emergence of a peace.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.119 [6:350]

Since a state of nature among nations, like a state of nature among individual human beings, is a condition that one ought to leave in order to enter a lawful condition, before this happens any rights of nations, and anything external that is mine or yours which states can acquire or retain by war, are merely provisional. Only in a universal association of states (analogous to that by which a people becomes a state) can rights come to hold conclusively and a true condition of peace come about.

The moral requirement to seek peace creates a moral obligation upon nations to create international institutions. At this point, you should ask what specific obligations nations have in seeking peace. It seems that people could seek peace in many ways: peace through domination, peace through negotiation; peace through annihilation. Finally, is a universal nation possible? Kant argues that a federation of states is required to protect people. These states must still act peaceably. The chance of actually achieving peace is irrelevant.

Kant, Immanuel. *THE METAPHYSICS OF MORALS*. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.119 [6:350]

But if such a state made of nations were to extend too far over vast regions, governing it and so too protecting each of its members would finally have to become impossible, while several such corporations would again bring a state of war. So perpetual peace, the ultimate goal of the whole right of nations, is indeed an unachievable idea. Still, the political principles directed toward perpetual peace, of entering into such alliance of states, which serve for continual approximation to it, are not unachievable. Instead, since continual approximation to it is a task based on duty and therefore on the right of human beings and of states, this can certainly be achieved.

Like the elimination of crime, the fact that peace is not completely possible does not eliminate the moral obligation to seek peace. It is reasonable to argue that we may never eliminate crime, but we should still take steps to limit crime. In this way, states possess an obligation to seek peace.

The doctrine of right has become a fully developed theory of political obligation based upon moral obligations. The doctrine shows the inherent similarities between the different types of external lawgiving: contractual, public and international laws. These obligations are couched in Kant's moral argument for a priori reasoning. The analysis of the inherent characteristics of different types of law giving creates a developed theory.

This can be very useful in LD. Kant's theory suggests that the interpretation of any moral resolution should start with a look at the agent of choice. If the agent of the resolution is an individual, then an analysis of the doctrine of virtue is probably more appropriate (see next chapter). If the agent is an external lawgiver, that is an agent who is coercing another person, the doctrine of right is the proper place to begin. From that vantage point, the topic should be analyzed based upon the unique characteristics of each agent. This can be used to argue about the legitimate scope of individual contracts or why individuals are obligated to the positive laws of their society. In this latter argument, Kant presents an alternative to traditional contractual political theorists. You can use him in this way, but his theory is not as well developed. It is particularly useful in a situation where you need a combination of political and moral theory, (since Kant discusses the linkage between morality and politics specifically). With this political foundation, Kant moves on to discuss his individual moral theory called the doctrine of virtue.

**Discussion Questions**

1. Compare and contrast Kant's view of the formation of the state with the views of Hobbes and Locke.
2. Are all people likely to agree with the principles that Kant describes as given by reason?
3. Is it valid to assume that all people will define reason in similar ways in an international setting?

**Resolutions**

1. Resolved: that violent revolution is justified as a response to political oppression.
2. Resolved: that civil disobedience is justified in a democracy.
3. Resolved: that the spirit of the laws ought to be valued above the letter of the law.



## THE DOCTRINE OF VIRTUE

### Internal Lawmaking

The doctrine of virtue regulates what laws can be installed by the process of internal law making. The doctrine of right laid out the limits and potential for external lawgiving as well as the use of coercion. Kant moves his theory into its full application by looking, finally, at what laws can be applied internally. These final rules apply to situations where the individual is deciding what action they ought to take. In this way, the doctrine of virtue is directed at analyzing the moral motivation of the individual in their own actions.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.145 [6:379]  
Accordingly, the system of the doctrine of duties in general is now divided into a system of the doctrine of right, which deals with duties that can be given by external laws, and the system of the doctrine of virtue, which treats of duties that cannot be so given; and this division may stand.

The system of obligations has two components, each with very different implications in LD. These doctrine are generally systems of obligations. They describe what each person must do if they are to act according to these systems of rules. This system is divided into certain obligations that can be coercively enforced (that is obligations that are legally enforceable) and those for which each person is responsible only to themselves and are not appropriate grounds for coercion.

These two doctrine have very different implications for LD topic analysis. Most topics seem to include a component of social coercion, or at least some kind of applied coercion. For this reason, I have focused this book on the doctrine of right that defines a moral system of legally enforceable obligations. Signs of this type of topic include situations where one individual is supposed to bow to the authority of any separate entity; whether it be the government or another person.

The uses of the doctrine of virtue are more limited. Individual instances of coercion consider the doctrine of right, but an individual agent of action in a resolution allows for a second type of obligation: the personal obligation not warranting coercion. These obligations are needed to establish morality in the broad sense. They do not justify external actions to force me to abide by them. In this way, individuals are obligated to legal codes. But, in addition to these obligations, they are also obligated to a broader set of personal duties.

A question that we should now face is: Should the individual value legal obligations over individual obligations? Kant has already given contradictory answers to this problem. Kant did say that people are obligated to acquiesce to laws that they don't agree with. But, he also said that the comparison of duties should come from the basis of the duties. The duties to laws are contingent on some particular social circumstances while personal obligations are objective. Each of these arguments can be used as a reason for prioritizing one system over the other.

The best explanation of the distinction between coercion justifying duties and those that do not justify coercion is presented in terms of the correlative rights.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.147 [6:383]  
To every duty there corresponds a right in the sense of an authorization to do something; but it is not the case that to every duty there corresponds rights of another to coerce someone. Instead, such duties are called, specifically, duties of right. Similarly, to every ethical obligation there corresponds the concept of virtue, but not all ethical duties are thereby duties of virtue. Those duties that have not to do so much with a certain end (matter, object of choice) as merely with what is formal in the moral determination of the will (e.g., that an action in conformity with duty must also be done from duty) are not duties of virtue. Only an end that is also a duty can be called a duty of virtue.

The key idea here is the concept of an end that is also a duty. The chief puzzle in Kant's moral philosophy is in identifying where these ends, as duties, actually exist. A component of this moral argument is the need for action based on duty - not inclination. It may appear moral for me to give to the poor. But, if I do so because I feel better about myself, rather than because I have recognized the duty to give, I am not actually moral. For this reason, it is not possible to be obligated to your own desires. Acting on those desires is, in no way, morally binding. Therefore, acting on a desire is not a moral obligation.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.150 [6:386]  
For his own happiness is an end that human being has (by virtue of the impulses of nature), but this end can never be without self-contradiction be regarded as a duty. What everyone already wants is unavoidably, of his own accord, does not come under the concept of duty, which is constraint to an end adopted reluctantly. Hence it is self-contradictory to say that he is under obligation to promote his own happiness with all his power.

This quote should present you with a guide for how to argue that an obligation is an end and a duty. Above, Kant provides an example of something that is an appropriate end but that is impossible to will as an obligation and therefore not a duty. For the obligation to be a duty it must be possible to will the maxim as universal. Kant suggests that the best test for universalizability (the ability to make a maxim universal) is non-contradiction. Problems arise in the establishment of a test for a universality. What does it mean to be contradictory? Does the obligation only have to not contradict itself, or does it have to avoid contradicting any other obligation? This leaves open the largest question in Kantian thought: What is required to prove a maxim universal? One test, that seems pretty strong, is Rawls' veil of ignorance. This argument was inspired by Kant and was designed as a method to test for a priori reasoning. This test can be adopted by a Kantian case in order to round-out the theory with a strong and clear criterion.

Much of the rest of Kant's doctrine of virtue is a clarification of this one principle: the need for ends that are also duties. He ties this into his larger theory of morality by integrating internal lawgiving into his original requirement of universal law making.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.152 [6:388-9]  
The concept of duty stands in immediate relation to a law (even if I abstract from all ends, as the matter of law). The formal principle of duty, in the categorical imperative "So act that the maxim of your action could become a universal law," already indicates this. Ethics adds only that this principle is to be thought as the law of your own will and not of will in general . . . . Maxims are here regarded as subjective principles which merely qualify for giving of universal law, and the requirement that they so qualify is only a negative principle (not to come into conflict with a law as such). – How can there be beyond this principle, a law for maxims of action?

Each individual is responsible only to themselves in accordance with the doctrine of virtue. The laws generated by the doctrine of virtue hold obligation only over the particular individual that seeks to test their will. In this way, only an individual can tell if they themselves are moral; only an individual knows if their motives (the maxims they act upon) are based upon duties. Watching someone act can not serve as a test for virtue; only for "rightness."

The internal moral doctrine requires development in the sense that, even if we can decide upon our duties, it is difficult to figure out how to act upon our duties. Kant suggests that duties can either be wide or narrow.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.153 [6:390]  
This proposition follows from the proceeding one; for if the law can prescribe only the maxim of actions, not actions themselves, this is a sign that it leaves a playroom for free choice in following (complying with) the law, that is, that the law cannot specify precisely in what way one is to act and how much one is to do by the action for an end that is also a duty. – But a wide duty is not to be taken as permission to make exceptions to the maxim of action but only as permission to limit one's maxim of duty by another (e.g., love of one's neighbor in general by love of one's parents), by which in fact the field for the practice of virtue is widened. – The wider the duty, therefore, the more imperfect is a man's obligation to action; as he, nevertheless brings closer to narrow duty (duties of right) the maxim of complying with wide duty (in his disposition), so much the more perfect is his virtuous action.

This seems to be an intuitive aspect of any moral theory. The broader the goals, the more discretion a person has in following those obligations. In a moral sense, this is less clear. Why do broad moral obligations give more imperfect obligations? Why do narrow duties seem to have more moral weight (in the sense that we are more strongly tied to act upon these obligations)? The obligation to attend class is more specific than the obligation to protect humanity. But, it is hard to say that the former is of greater weight than the latter.

The general obligations that Kant posits include obligations to others and obligations to self. These are very broad. Such wide obligations cultivate extremely impure obligations. In this way, each individual is responsible to themselves to fulfill their obligations to self in whatever way they think is required. The awkwardness of the preceding statement should show you what a thin line Kant walks. Each person's obligation to self is an obligation of virtue and, thus, not a sound basis for coercion. At the same time, these obligations are very broad. Therefore, the individual has to decide for themselves how to fulfill these obligations. This leaves unanswered the question of how much room we should leave people to pursue their own lifestyle.

Kant begins with the obligation to self and derives an entire set of obligations. The obligation to self is not an obligation to follow one's desires; that would not be an obligation at all. Instead, it is an obligation to make the difficult choices to develop one's talents. In this way, a part of obligation to self is, in fact, a moral obligation. There is a moral obligation to cultivate your talents and to ignore capricious desires.

Kant, Immanuel. *THE METAPHYSICS OF MORALS*. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.154 [6:391-2]

Natural perfection is the cultivation of any capacities whatever for furthering ends set forth by reason. That this is a duty and so in itself an end, and that the cultivation of our capacities, even without regard for the advantage it affords us, is based on an unconditional (moral) imperative rather than a condition (pragmatic) one, can be shown in this way. The capacity to set oneself an end – any end whatsoever – is what characterizes humanity (as distinguished from animality). Hence there is also bound up with the end of humanity in our person the rational will, and so the duty, to make ourselves worthy of humanity by culture in general, by procuring the capacity to realize all sorts of possible ends, so far as this is to be found in a human being himself. In other words, the human being has a duty to cultivate the crude predisposition of his nature, by which the animal is first raised in the human being, It is therefore a duty in itself.

Kant suggested in the doctrine of right that people could be coerced to accept and support the inherent humanity within them. Clearly, a conflict can arise between an individual's perception of self-fulfillment and a society's perception of that lifestyle. Kant seems to suggest that the individual is moral if they pursue a lifestyle that the society does not support. But, he reminds us that they must acquiesce to any positive laws that exist. The individual has no moral obligation to a specific lifestyle. But, they do have an obligation to follow the laws of society (as discussed earlier).

Kant, Immanuel. *THE METAPHYSICS OF MORALS*. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.155 [6:392]

No rational principle prescribes specifically how far one should go in cultivating one's capacities (in enlarging or correcting one's capacity for understanding, i.e., in acquiring knowledge or skill). Then too, the different situations in which human beings may find themselves make a man's choice of the occupation for which he should cultivate his talents very much a matter for him to decide as he chooses.

The expansive obligation to self creates a series of imperfect obligations upon individuals which each person must interpret for themselves. I can not stress enough that this principle only applies to instances of internal law giving; that is, individual non-coerced moral decisions. Kant's statement that people ought to develop their talents can be interpreted as a moral obligation (but not one that justifies state authority and coercion).

### **Ethical Relations with Others**

The need to universalize the obligation to cultivate our own humanity becomes an obligation to others. Kant suggests that our obligation to self creates a will to be respected by other people. Since we want others to respect us, we must, in turn, accept the requirement to respect others. This obligation to others is a natural derivative of the universalization of the obligation to self.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.156 [6:393]  
[S]ince our self-love cannot be separated from our need to be loved (helped in the case of need) by others as well, we therefore make ourselves an end for others; and the only way this maxim can be binding is through qualification as a universal law, hence through our will to make others our ends as well. The happiness of others is therefore an end that is also a duty.

Kant derives the love of others as the necessary consequent of the love of self. In this way, he illustrates another application of the principle of universal will. One ought not put other people under obligations that they would not accept themselves. In this way, Kant's moral theory begins to resemble more closely classical Judeo-Christian ethics.

This obligation to others, generated as a derivative of a wide obligation to self, is in itself a wide obligation.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.156 [6:393]  
For, a maxim of promoting other's happiness at the sacrifice of one's own happiness, one's true needs, would conflict with itself if it were made a universal law. Hence this duty is only a wide one; the duty has in it a latitude for doing more or less, and no specific limits can be assigned to what should be done – The law holds only for maxims, not for the determinate action.

This makes transparent the flaw in many of Kant's arguments concerning the justification of his moral theory. Duties, broadly conceived, do conflict. In this quote, he admits that. I would argue that the narrow obligations are those that require more contextual knowledge to define. Take, for example, the obligation to self. The obligation to self is very broad and generates imperfect obligations. The more narrow obligation may be the obligation to go to class or work on debate. What makes this obligation more narrow if not the inclusion of contextual parameters? In this case, the strongest arguments are those that do include components of context and are not entirely a priori.

This returns us to the perennial CX question about lying to protect a Jewish child from the SS. The general obligation to tell the truth may be too broad to be enforceable against the narrow obligation to protect an innocent child. The application of an obligation to tell the truth only generates imperfect obligations because it is wide. The obligation to protect an innocent child creates more solid obligations. At what point does an obligation become narrow or broad? I have no idea. I suspect no one does.

The subject of an individual's obligations to self becomes a very broad discussion. What the obligation entails is a pretty large question that Kant himself grapples with. He begins by separating the positive obligations to self from the negative obligations to self.

Kant, Immanuel. *THE METAPHYSICS OF MORALS*. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.174 [6:419]

The only objective division of duties to oneself will, accordingly, be the division into what is formal and what is material in duties to oneself. The first of these are limiting (negative) duties; the second, widening (positive duties to oneself). Negative duties forbid a human being to act contrary to the end of his nature and so have to do merely with his self-preservation; positive duties, which command him to make certain object of choice his end, concern his perfecting of himself. Both of them belong to virtue, either as duties of omission or as duties of commission, but both belong to it as duties of virtue.

The distinction between positive and negative rights is important. The obligation of self-preservation only extends to negative prohibitions preventing harm to self. These limitations are relatively uncontroversial. The true controversy arises when people suggest that positive obligations exist that command individuals to pursue their talents. Even more problematic is the definition of how a person should develop their talents.

The strongest obligation an individual has is to themselves as a moral entity. These obligations consist in only the formal, negative moral obligations to protect the moral nature of each person. There is no positive obligation to develop oneself as a moral being.

Kant, Immanuel. *THE METAPHYSICS OF MORALS*. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.175 [6:420]

But a human being's duty to himself as a moral being only (without taking his animality into consideration) consists in what is formal in the consistency of the maxims of his will with the dignity of humanity in his person. It consists, therefore, in a prohibition against depriving himself in his person. It consists, therefore, in a prohibition against depriving himself of the prerogative of a moral being, that of acting in accordance with principles, that is, inner freedom, and so making himself a plaything of the mere inclinations and hence a thing. – The vices contrary to this duty are lying, avarice, and false humility.

This leaves a lot of room for subjectivity. What do the obligations to avoid lying etc. actually entail? Are these wide or narrow obligations? These duties are derived from the obligation to self and are, therefore, all a product of the universalization process. You can witness the development of a fully developed and elaborated moral philosophy. Kant continues elaborating these concepts, but do realize how far we have come from the assertion that all moral obligations are universal moral laws.

The more specific applications of these negative duties to humans as moral persons include another answer to why people can not will their own existence.

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.177 [6:422-3]

A human being cannot renounce his personality as long as he is a subject of duty, hence as long as he lives; and it is a contradiction that he should be authorized to withdraw from all obligation, that is, freely to act if not authorization were needed for his action. To annihilate the subject of morality in one's own person is to root out the existence of morality itself from the world, as far as one can, even though morality is an end in itself. Consequently, disposing of oneself as a mere means to some discretionary end is debasing humanity in one's person, to which man was nevertheless entrusted for preservation.

Remember that this regulates personal moral decisions. Therefore, it also regulates the decision as to what consists of a "discretionary end". The person must maintain themselves as a moral person, as the end of all actions, and forge maxims appropriately. The duty to oneself as a moral person entails the inclusion of yourself as an end in all of your actions based on duty; not the inclusion of your desires as the end.

The universalization of this rule requires that all other people also be treated as an end. If it is incorrect for me to use myself as a means, then it is also wrong to use any other person as a means. This is the source of the debate phrase: "that each person has a moral obligation not to use someone as a means to an independent end."

Kant, Immanuel. THE METAPHYSICS OF MORALS. Cambridge University Press. Great Britain. 1996 Edition. Translated by Mary Gregor. Pg.186 [6:434-5]

But a human being regarded as a person, that is, as the subject of a morally practical reason, is exalted above any price; for as a person he is not to be valued merely as a means to the ends of others or even to his own ends, but as an end in himself, that is, he possess a dignity (an absolute inner worth) by which he exacts respect for himself from all other rational beings in the world. He can measure himself with every other being of this kind and value himself on a footing of equality with them.

Here, Kant's moral thought sees its full fruition. The need for universal law creates, through various and sundry logical processes, a need for a universal respect for moral persons. This theory is one of the most tight and self-contained theories in moral thought. Look back at the foundations of his moral theory to see how far the theory has progressed based on a priori reasoning.

### Discussion Questions

1. How can you tell whether a duty is wide or narrow?
2. Are all narrow obligations more important than all wide obligations?
3. How can you tell what sorts of obligations fall under the wide obligation to help others?

**Resolutions**

1. Resolved: that a person has a right to die when and how they choose.
2. Resolved: that all citizens are morally obligated to perform a period of public service.
3. Resolved: that economic sanctions are morally justified as a tool of international diplomacy.



## FOUNDATIONS OF GEWIRTH'S MORAL THEORY

Alan Gewirth is a contemporary author and proponent of deontological theory. He develops a moral theory much like discussed in the previous section dealing with Kant. You will find that Gewirth presents many advantages over the use of Kant in LD rounds. First, he is contemporary and develops arguments for contemporary cases. Kant did not bother much with application examples. Second, Gewirth language is easier to quote and present to a judge (judges tend to be rusty on the German epistemological jargon). Finally, Gewirth develops arguments that relate to contemporary philosophical controversies as well as policy issues. You will find direct references to communitarianism and the positive rights debate. As LDers start to use Gewirth more often, he may soon become as common as Rawls in debate cases. Given the clarity of his presentation, he may become even more popular.

### Gewirth's Theory of Rights

Gewirth starts by announcing his intentions with his book. He wants to create a theory of rights that supports both the value of individual rights and the value of community. He wants to overcome the animosity between individualists and communitarians. This book is clearly the product of the contemporary dialogue in political philosophy.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 1.

This book has two chief aims. One is to show that rights and community, far from being antithetical to one another, have a relation of mutual support. The other, to which the first is ancillary, is to develop in some detail how this relation can serve to fulfill the economic and other rights of the most deprived members of society and thereby lead to greater economic and political equality. The argument I shall present is thus concerned with the moral justification of economic and social policies and institutions, especially as they help to relieve human suffering. Such policies and institutions, when they are embodied in the state or political society, constitute what I call the community of rights.

This book is actually the follow-up to a previous book in which Gewirth defended the foundations of his moral theory. The rest of this section covers the review of the moral theory as described in the most recent book. I would encourage any readers who find this section interesting to pick up Gewirth's previous volume REASON AND MORALITY to see a more detailed account of the moral theory underlying Gewirth's theory of rights.

This text instead moves from moral theory to practical discussions of rights. Gewirth wants to move beyond the current discussions of the conflict between individual rights and community ties.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 1.

In one of the main modes of interpretation, to focus on rights in moral and political philosophy entails giving primary consideration to individuals conceived as atomic entities existing independent of social ties, while to focus instead on community is to regard persons as having inherent affective social relations to one another - relations in groups ranging from one's family through one's ethnic and other clusters to one's country. A direct consequence of this contrast is that the phrase "community of rights" is viewed as an oxymoron by many thinkers, going back at least to Bentham and Marx.

Gewirth feels that the key to overcoming the opposition between rights and community is to realize that all rights have positive and negative aspects. If we maintain a system that supports both positive and negative rights, we will transcend the conflict between rights and community and create a superior social order.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 4-5.

This book attempts to provide reasoned arguments against this political - or perhaps rather antipolitical - rejection of an affirmative relation between rights and community. I shall try to show that rights - especially the human rights that equally belong to all humans as such - are positive as well as negative, and that as positive they warrant serious and active governmental concern for protecting and promoting the freedom and well-being of all humans, especially those how are most deprived. A government violates human rights when its hands-off policy lets the most vulnerable members of society suffer harms and injuries like poverty, disease, illiteracy, or unemployment when it can take measures to prevent or alleviate such ills and when the persons affected can not ward them off by their own efforts. The governmental policies here upheld do not preclude individual initiatives or remedies; on the contrary, a main aim must be to enable persons to be productive agents on their own behalf. But it is a serious error to confuse the desirability of this aim with the belief that it is already fully within the powers or abilities of the persons or groups in questions.

This is a tall order. The split between the supporters of negative rights (such as libertarians) and the supporters of positive rights (such as welfare statists and communitarians) is deep. This debate plays itself out often in LD debate. If Gewirth can make good on his intentions, he will add a major argument to the LD lexicon. You will have to judge if his theory is up to the task.

He starts by developing the meaning of rights. Rights, as he talks of them, are based on humanity and thus held by all people by virtue of their humanness.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 6.

The rights in question are human rights, rights that are had by every human being simply insofar as he or she is human. But while the rights involve claims to the protection of individual interests, they also require of each person that she act with due regard to other persons' interest as well her own. For, as human rights, they are not only had by all humans; they are also rights against all humans. In other words, each human being is both the subject or right-holder and the respondent or duty-bearer. The objects of these rights, what they are rights to, are freedom and well-being, which are the necessary conditions of action and generally successful action (this will be shown below). It follows that, with regard to human rights, every human has rights to freedom and well-being against all other humans, but every other human also has the rights against him, so that he has correlative duties toward them. The concept of human rights thus entails a mutualist and egalitarian universality: each human must respect the rights of all the others while having his rights respected by all the others, so that there must be a mutual sharing of the benefits of rights and the burdens of duties. In this way, each individual's personal claim to and protected property in the necessary goods of action are combined with a required concern for interests shared in common with all other persons. Because this principle of human rights entails the requirement of mutual respect (and of mutual aid when needed and practicable), it is a principle of social solidarity requires institutions whereby hitherto deprived groups can be brought nearer to equality. By the recognition of the mutuality entailed by human rights, the society becomes a community. So the antithesis between rights and community is bridged.

There you go. That is all you need to know about Gewirth. This effectively summarizes his argument. Of course, there is one little question left. Why? Why is this the correct moral of human rights? Why must people accept mutual obligations of respect and aid? Why do all rights involve freedom and well-being? These are all questions that Gewirth will try to answer in the rest of the book. This quote serves as a roadmap. Understanding this quote will give you a sense of direction and purpose in his arguments. It will also help you put the pieces together when sometimes it is hard to see why Gewirth is making a specific argument at a specific time. While these sorts of quotes are not useful in rounds, introductory quotes are very useful in decoding complicated arguments and texts. Use them whenever an author takes the time to sketch out his or her argument. You will be better for it in the end.

Gewirth starts the defense of his ambitious project with a formal definition of a claim right. The definition is formal in that it is empty. It does not include the "object" of the rights, as Gewirth called used the term earlier. It does not say exactly which rights people hold against one another. It only states what it means to have a right (whatever that right may be).

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 8-9.

The general structure of a claim-right is given by the following formula:

A has a right to X against B by virtue of Y.

There are five main elements here: first, the subject (A) of the right, the right-holder; second, the nature of the right, what being a right consists in; third, the object (X) of the rights, what it is a right to; fourth, the respondent (B) of the right, the person or group what has the correlative duty; and fifth, the justifying basis (Y) of the right. When the rights in question are human rights, both the subject and the respondents comprise all human beings equally; the objects are certain essential interests of human beings as prospective purposive agents; and the justifying basis is a stringently rational supreme principle of morality.

This is a great quote. Again, it is not useful in rounds. This quote serves to organize just about every argument one can make about rights. Most theories of rights differ with regard to Y. It is useful to figure out A, X, and B before you even worry about Y when confronting a new claim-right. Often, A, X, and B will give you some insight in to what Y could be.

Gewirth goes further to put meat on the bones of this very vague formula for rights. Rights involve justified demands for respect. You can just add this to the prior definition. A has a right to X against B by virtue of Y when A has an interest in X that B ought to respect.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 9.

[A] right is an individual's interest that ought to be respected and protected; and this 'ought' involves, on the one side, that the interest in question is something that is due or owed to the subject or right-holder as her personal property, as what she is personally entitled to have and control for her own sake; and, on the other side, that other persons, as respondents, have a mandatory duty at least not to infringe this property. The importance of rights stems from the need for a value of such protection, from the claim that this protection is justified as being owed to persons for their own sakes (so that rights go beyond mere interests as such), from the mandatoriness of this protection as thus owed and as grounding strict duties, and, especially when they are human rights, from the great value of the objects or interests that need to be protected; interests ranging from life, physical integrity, and economic security to self-esteem and education.

This quotation is at one time very frustrating and very helpful. It is helpful because it ties together then language of a variety of theories of rights ("giving each his or her due", Nozick's entitlement theory, property theories of rights, etc.). It is frustrating because it ties together heterogeneous theories of rights. Nozick uses the specific term entitlement in order to distinguish his version of rights from other theories of rights. At a certain level of generality, these theories all talk about the same idea, individual rights. However, the term "entitlement" is not interchangeable with the term "property." It blurs together some important, though sometimes obscure, differences between rights theories in order to refer to their common elements. Of course, Gewirth is most interested in the common elements. One of these commonalities is the relationship between rights and duties.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 9.

It should be noted that although claim-rights and duties are correlative, this does not mean that they are identical. Instead, they have different normative contents and a different valuational status, in that rights are to duties as benefits are to burdens. For rights are justified claims to certain benefits, the support or protection of certain interests of the right-holder. Duties, on the other hand, are justified burdens on the part of the respondent or duty-bearer: they restrict his freedom by requiring that he conduct himself in ways that directly benefit not himself but rather the rights-holder. But burdens are for the sake of benefits, and not vice versa. Hence, duties, which are burdens, are for the sake of rights, whose objects are benefits. Rights, then, are prior to duties in the order of justifying purpose or final cause, in that respondents have correlative duties because subjects have certain rights. This justificatory priority of rights over duties is not antithetical to their being correlative to one another; and it still leaves open that some duties may have grounds other than rights.

In LD, this priority of rights and duties can be useful. Gewirth's priority of rights over duties shapes the way that one must debate justification of claims. You can define duties based on rights; you should not define rights based on duties. Rights are analytically prior. That is, rights create duties. We should not look for duties to create rights.

The rights that we justify must be categorical and obligatory, not contingent or optional.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 12-3.

[B]ecause of the stringency of the 'oughts' or duties entailed by claim-rights, the rights justified by the argument must emerge as categorically obligatory or normatively necessary, in that their requirements cannot be rightly evaded by any actual or prospective agents regardless of their self-interested inclinations or their variable ideals, institutional affiliations, or social conventions. Hence, the antecedent of the argument must itself also be necessary, not contingent, in that it must logically impose itself on all the protagonists who figure in the argument. Second, the rights-principle that emerges from the argument must be determinate in that it does not serve to justify mutually conflicting duties based on conflicting interests or different cultural or other norms. In view of the conciliation here envisaged between rights and community, this is an especially pressing requirement.

This quote is easy to misinterpret from the perspective of LD. Gewirth states that rights are universally binding. This is a definitional quote, not an argument. He is not saying that there is some reason that all rights are universally binding. He is saying that any claim that is not universally binding is not actually a right. This can lead to some abuses in LD. One can apply this to a topic that compares a right to a social good in order to argue that the right is universally binding and thus can not be sacrificed on behalf of any other type of claim (the rights are trumps arguments). The problem is that Gewirth is only analyzing the philosophical concept of a right. He is not saying that everything that everyone calls a right is universally binding. Undoubtedly, many people will misclassify claims as rights that are not actually universally binding and are therefore not rights.

In LD, you should not assume that anything called a right in a resolution is a right in the sense that Gewirth uses the term. Instead, it is your job to show that a stated right is a right in the sense of being universally binding. You have to prove the claim is actually a right, you cannot simply assume it. Assuming that all claims in resolutions referred to as rights leads to problems of rights conflicts (impossible within Gewirth's definition) and poor debate. If you think that you have a definitional reason that a topic is true or false, you are simply avoiding the debate. This leaves you with unconvincing arguments and an untenable position.

Up to this point, Gewirth has talked in formal terms. He has described what it means to be a right. He has not provided any way to tell what claims ought to be respected as rights. Gewirth provides human action as the basis for all claims.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 13.

The relevant basis is human action. For it is with actions that all moralities or moral precepts deal, directly or indirectly. All moral precepts tell human beings how they ought to act, especially toward one another, whether within or outside of institutions; or, as in the case of the virtues, they tell what kind of person one ought to be. Since to have a virtue is, among other things, or be disposed to act in certain ways, actions figure at least indirectly in moral precepts focused on virtues. The context of action also has the necessity indicated above, since all humans, at least insofar as they are relevant to rights-claims, are actual, prospective, or potential agents. No human, then, can evade the context of action, except perhaps by committing suicide; and even then the steps he takes for this purpose are themselves action.

Gewirth ties human action in to his notion of normative necessity. Remember that the basis of rights must be "necessary". The basis for rights must be something that all people need. Since all people act, all people must have the necessities of action. For this reason, the necessities of action serve as a basis for the rights that obligate categorically. All agents (people who act) must assume the following things in order to act. These assumptions are the bases of human rights.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 13-4.

Now when moral precepts are addressed to persons as actual or prospective agents, two assumptions are made about the proximate generic features of the actions they prescribe. One feature is voluntariness or freedom; it is assumed that the persons addressed can control their behavior by their unforced choice while having knowledge of relevant circumstances. The other feature is purposiveness and intentionality; it is assumed that agents aim to attain some end or goal which constitutes their reason for acting; this goal may consist either in the action itself or in something to be achieved by the action. Since, moreover, the aim of acting is to succeed in fulfilling one's purposes, when purposiveness is extended to the general conditions required for such success, it becomes the more general feature which I shall call well-being. Viewed from the standpoint of action, then, well-being consists in having the various substantive conditions and abilities that are proximately required either for acting at all or for having general chances of success in achieving one's purposes through one's action. Such well-being falls into a hierarchy of three different levels. Basic well-being consists in having the essential preconditions of action, such as life, physical integrity, mental equilibrium. Non-subtractive well-being consists in having the general abilities and conditions needed for maintaining undiminished one's general level of purpose-fulfillment and one's capabilities for particular actions; examples are not being lied to or stolen from. Additive well-being consists in having the general abilities and conditions needed for increasing one's level of purpose-fulfillment and one's capabilities for particular actions; examples are education, self-esteem, and opportunities for acquiring wealth and income.

It is not hard to spot the most controversial claim in the last quote. The bases of rights are the necessities of action. To act we must be free. No problem here. To act we must be alive. No problem here. To act we must have education and self-esteem. Wait a second. We have suddenly shifted gears. Now we are talking about some tenuous necessities. It is a tough sell to say that we must have education in order to act. Surely, education increases our capacity to act but that is not the point. Only necessities are universally binding, not the convenient additions that can increase our capacity. Additive well-being will be an ongoing controversial item in Gewirth's list of rights.

Gewirth justifies the need for freedom and well-being as being the procedural and the substantive conditions for action.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 14.

[F]reedom and well-being are the proximate necessary conditions and generic features of action and of generally successful action. They are distinguished from one another as being, respectively, the procedural and the substantive conditions of action, or, again respectively, as involving the efficient causes and the final causes of action. The freedom that is here in question comprises both negative and positive freedom: negative, in that when one controls one's behavior by one's unforced choice one is not obstructed or interfered with by other persons; positive, in that one then has the power or ability to act as one chooses.

The crux of the positive and negative rights debate is over whether rights are protections or powers. Libertarians argue that rights are only protections that prevent interference by other people. Gewirth sees rights as also requiring the power to act. You must have the "stuff" necessary to act in order to act. The necessity of the power to act serves as Gewirth's basis for calling well-being the basis for a right-claim.

Gewirth next provides a method for deciding which rights are necessary for human action. This method will serve as a way to test any claim to see whether it is a right.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 16.

How are moral or human rights derived from the context and generic features of action? It is surely not the case that when one acts, one thereby acquires a right to act, let alone to succeed in achieving one's purposes. As against such an assertoric method, what must be used here is a dialectically necessary method. The method is dialectical (as against assertoric) in that it begins not from the statement made by the writer or speaker himself but rather from statements presented as being made or accepted by a purposive agent, and it examines what they logically imply. The method is dialectically necessary (as against dialectically contingent) in that the statements in question logically must be made or accepted by every agent because they derive from the generic features of purposive action, including the conative standpoint common to all agents. The reason for using the dialectically necessary method is at least twofold. Only through its necessary aspect can the argument achieve the normative necessity of categoricalness that was seen to be required for the grounding of rights. And only through its dialectical aspect can the argument for rights surmount certain familiar logical difficulties about the transition from 'is' to 'ought.' For the argument's antecedents logically incorporate the conativeness that figures essentially in right-claims. Moreover, only through its dialectical aspect can the argument show how, from the agent's standpoint, her claiming of rights entails duties of other persons to respect her rights.

This is a tough quote to make it through. You will need to break it down in to pieces. First, rights are not assertoric. That means that saying that you have a right does not mean that you have a right. It is not the individual act of asserting a right that makes the right exist. It must be something more. Instead, Gewirth suggests a dialectical process in which all claims are broken down to see what one must assume in order to make a claim as a generic goal-seeking person. If the claim is necessary for all goal-seeking agents, it is morally binding. The genericness of the model person in the argument makes the results universal. The necessity of the resulting assumptions makes the rights categorically binding.

The utility of this method to LD is obvious. We can test any supposed right with this system. Lets start with a simple example. Is there a human right to free speech? Many authors argue that speech is essential to identity formation and goal-seeking rationality. If free speech is essential to goal-seeking (called "purposiveness" by Gewirth), then it is a right. This is a little weak, but it works.



Lets try a second example. Is there a human right to health care? Without health care, individuals will not be able to pursue their own projects, whatever that may be. They lack the well-being that Gewirth calls essential to goal-seeking. So health care must be a right.

Ironically, this method seems to justify positive rights with greater ease than negative rights. While it is easy to justify rights like physical security, free conscience, health care, and welfare, it is difficult to justify some claims like free speech, the right to bear arms, and the right to privacy. This fits in which Gewirth's project of justifying positive rights and focusing on positive rights as the basis of the community / individual fusion.

Gewirth clarifies the method of dialectical necessity with a much simpler explanation. This is better for use in rounds, but you need to work through the tough quote to really understand the short quote that follows.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 16.

[R]ights and rights-claims arise logically and fundamentally out of the concern of all human beings, as prospective purposive agents, that the proximate necessary conditions of their action and generally successful action be protected. This concern corresponds both to the general definition of rights given above and to the primary occasions on which they are claimed. It is in this way that action serves as the basis of human rights: persons must have and claim these rights because their objects are needed for the very possibility of action and generally successful action.

Is free speech "needed for the very possibility of action?" Many critics argue that all the positive rights listed by Gewirth fail his own test. Health care is not necessary for action. It, like welfare, is necessary for action in some unfortunate circumstances. This is historically, circumstantially contingent. These necessities are not universal in the sense that Gewirth wants to use the term. Gewirth will spend some time trying to overcome this charge. He will have to show that all of the various types of well-being are truly necessary for action.

### **The Proof of the Principle of Generic Consistency**

Gewirth next embarks on a daunting task. He wants to prove that all individual ought to protect generic rights to freedom and well-being. Luckily for us, he does this very slowly and very carefully. You can watch the argument build with every premise. We will be able to see the justifications made for every step of his argument. This can serve as much as a model of how to build arguments as it serves to prove a specific claim.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 17.

Since the agent has at least a minimum of self-awareness, when he acts for some purpose there can be attributed to him a statement of the form (1) "I do X for end of purpose E." This is the statement form that logically must be accepted by every agent for himself, so that it serves to ground the categoricalness of the rights-principle generated by the argument. From (1), the agent must logically accept (2) "E is good." For while the goodness in question need not be moral, and the ascription of goodness need not be definitive, it involves the agent's acceptance that the purpose for which he acts has for him at least some value sufficient to merit his trying to attain it. Now since freedom and well-being are the proximate necessary conditions of the agent's acting to attain any of this purposes and this any goods, the agent, on the basis of his accepting (2), must also accept (3) "My freedom and well-being are necessary goods." Hence he must also accept (4) "I must have freedom and well-being," where this 'must' is practical-prescriptive in that it signifies the agent's advocacy or endorsement of his having the conditions he needs to have in order to act and to act successfully in general.

Gewirth's trick may be in the last statement. Freedom is clearly necessary for the pursuit of any goal. That is easy and uncontroversial. The trick is the well-being assumption. It is not clear that well-being is necessary to all action. However, it is safe to say that well-being is necessary to one's acting "successfully in general." The "in general" clause gives you a little wiggle room. Then again, it weakens the force of the necessity argument. Now we are talking about necessity in general, not the universal logical preconditions that he spoke of earlier. Watch how Gewirth plays with this dilemma as his argument progress.

Returning to our regularly scheduled argument, Gewirth concluded the last quote by saying that all people must assume that they need freedom and well-being if they are to achieve any of their goals. Gewirth picks up for here and moves us in to morality by requiring that individuals universally respect for others the requirements they find in their own actions.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 17-18.

The next step is an especially crucial one. On the basis of his accepting (4), the agent logically must also accept (5) "I have rights to freedom and well-being." It is at this step that the normative (though not necessarily moral) concept of rights (in the strong sense of rights-claims) is introduced, as an essential element in the thinking of every rational agent. That the agency logically must accept (5) on the basis of accepting (4) can be shown as follows. Suppose he rejects (5). Then, because of the correlativity of claim-rights and strict 'oughts,' he also has to reject (6) "All other persons ought at least refrain from removing or interfering with my freedom and well-being." By rejecting (6), he has to accept (7) "Other people may (i.e. It is permissible that another person) remove or interfere with my freedom and well-being." And by accepting (7), he also has to accept (8) "I may not (i.e. It is permissible that I not) have freedom and well-being. But (8) contradicts (4). Since every agent must accept (4), every agent must reject that denial, so, that he must accept (5) "I have rights to freedom and well-being," I call them generic rights because they are right to have the generic features of action and successful action characterize one's behavior.

Suddenly the argument got a little complicated. Note that the most important premise up to this point is (4). This is the lynchpin of the entire argument (up to this point). If you want, draw out each premise like a flowchart. If you literally draw arrows between each argument, the relationship between arguments will make more sense. In a way, Gewirth does you a great favor by numbering his premises. This makes the drawing process easy. Leave yourself a lot of room to describe the transition and added assumptions that convert one premise in to another. This is a great way to see where an author is making big jumps. It will also illustrate strong argument building and give you a model of what a case should look like.

Gewirth is not done with (5). He pushes the argument farther by introducing a universalizing step.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 18.

This is also of special importance because it involves the transition from prudential to moral rights. On the basis of his having to accept that he has the generic rights, every agent logically must accept that all other actual and prospective agents have these rights equally with his own. This generalization is an application of the logical principle of universalizability: if some predicate P belongs to some subject S because S has a certain quality Q (where the 'because' is that of sufficient condition), the P logically must belong to all other subjects S... that also have Q. Thus, if any agent holds that he has the generic right because he is a prospective purposive agent, than he also logically must hold that every prospective agent has the generic rights.

This is a lot more than a "logical principle". Sure, the logical definition is neutral, but the moral implication is not. It does not follow that all agents must accept the "logical necessity" of universalizing their own needs to others. I do not have to accept that anything that I need, I must also recognize as a need for you. Universalization is a controversial modernist notion. Post-moderns would reject it out of hand. That being said, most American moral theorists wouldn't bat an eye at the assumption. There is a deeply ingrained assumption that morality requires universalizing rights. Gewirth's discussion only serves to reveal how deep this assumption goes. Gewirth is so confident in the assumption that morality requires universalization that he calls it a logical principle.

On with the proof.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 18-9.

Now every agent logically must accept (9) "I have rights to freedom and well-being because I am a purposive agent." For suppose some agent A were to object that the necessary and sufficient justifying condition of his having the generic rights is his having some property R that is more restrictive than simple being a prospective purposive agent. Examples of R might include his being a wage-earner or an entrepreneur or a banker or a landlord or an American or white or black or male or being named "Wadsworth Donisthorpe," and so forth. From this it would follow that A would logically have to hold that it is only have R that justifies his having the generic rights, so that if he were to lack R, then he would not have the generic rights. But such an agent would contradict himself. For we saw that, as an agent, he logically must hold that he has the generic rights, since otherwise he would be in the position of accepting that he normatively need not have what he has accepted that he normatively must have, namely, the freedom and well-being that are the necessary conditions of action and successful action in general.

Here some communitarians would also disagree. Universality would mean that rights could only come from one's membership in the human community. What about rights that come from one's membership in a family, a private association, or a nation? Are these groups not relevant to rights? Gewirth continues in his proof.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 19.

From this it follows that every agent logically must acknowledge that, simply by virtue of being a prospective purpose agent, he has the generic rights, so that he also logically must accept (10) "All prospective purposive agents have rights to freedom and well-being." At this point, the rights in questions become moral rights, because the agent is now committed to taking favorable account of the interests of other persons as well as himself. The argument has thus shown that it is no longer rational for any agent to be exclusively self-interested, where 'rational' signifies conformity to the principle of noncontradiction as the fundamental principle of reason.

Here he catches the potential critic in a trap. If you accept that the basis for the necessities protected by generic rights is your identity as a purposive agent, then you must accept his argument (if you buy the whole universality bit). That means that if you accept the dialectical necessity method of defining rights, you must accept the basis for generic rights. This is interesting, but a lot of people simply would not accept the dialectical necessity model of rights. They might question the process of deeming something necessary (as I did above). They may question whether one can actually know anything about a generic prospective agent. This is a mental construct and is open to all of the attacks as being transcendental like Kant. Finally, one may simply reject that the needs of a generic agent are the basis for rights. Maybe contracts are the basis for rights. Maybe utility is the basis for rights. All that Gewirth has done is provided an elegant proof that will appeal to people that would agree with him from the beginning. He is not going to win a lot of converts with this proof. Then again, LD judges are not neutral. They often hold the same assumptions that Gewirth relies on in his proof. While I do not think that this argument will persuade a lot of Gewirth's critics, I think it can persuade a lot of judges in LD.

The result of this lengthy proof is Gewirth's major principle, the principle of generic consistency (PGC).

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 19.

Since the universalized judgment (10) sets a prescriptive requirement for the action of every agent toward all other prospective purposive agents, who are or may be the recipient of his action, every agent logically must also accept for himself a moral principle which may be formulated as follows: (11) Act in accord with the generic rights of your recipients as well as yourself. I call this the Principle of Generic Consistency (PGC), because it combines the formal consideration of logical consistency with the material consideration of the generic features and rights of actions.

Does this sound familiar? PGC sounds eerily like Kant's application of the categorical imperative to the relations with other people. Both Kant and Gewirth argue that we are morally obligated to extend all of the rights that we need ourselves to other people. Gewirth just happens to say this in English.

Gewirth does take the time to reply to the argument I have made numerous points up to now that moral consistency and universality are controversial values and not universal in the sense that Gewirth presents them.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 24-5.

The appeal to consistency in ethics - the thesis that the immoral person contradicts himself and thus is inherently irrational - goes back to Kant and indeed to Plato. It may be and has been objected, however, that such an appeal goes beyond what ethical arguments need and is capable of, and that it reflects a kind of rationalistic or intellectual fallacy, in that it reduces moral error to a logical error. There are two replies. First, the modality of logical necessity is the only way of accounting for and doing justice to, the categorical obligatoriness of moral judgments, especially those concerning human rights, whereby compliance with them is rationally mandatory for all actual or prospective agents regardless of their personal inclinations or institutional affiliations. Second, since the general sphere of morality is one of great dissensus, its competing claims and counterclaims can be rationally adjudicated in a nonquestion-begging way if we can show that one principle is such that logical consistency results from rejecting it, while this is not so with other principles. For this provides a conclusive argument in favor of the first principle, since a proposition whose denial is self-contradictory is itself necessarily true. This, then, is the point of emphasizing the criterion of logical consistency: not that of superceding moral criteria that use specifically moral concepts of persons and this interests, but rather that of providing a culminating structural argument where other arguments fail of conclusiveness.

This is not satisfactory. The first response is just bad. The critics of universality reject the entire project of categorical judgments. You cannot use the necessity of categorical judgments to justify universality. You are very much begging the questions. Post-modern critics in particular argue that there are not universal truths or necessities. Gewirth is basically saying that assuming that one needs categorical judgments (something that many critics DO NOT accept), you must have a universality assumption. Second, the critics of rationality (like many post-moderns) will not accept the proposition that contradiction is immorality. Gewirth again seems to argue that we have to have something. We have to have some conclusive moral principles. With the need for something, universality is the best that we can do. Post-modern critics will deny that we need anything. Conclusive moral truths are not out there. Looking really hard is not going to solve the problem. Assuming that they exist is not a sound foundation for any argument purporting to prove the existence of moral truths. Interested readers should look to the original text of this book and the previous text, REASON AND MORALITY, for more on this debate.

Gewirth concludes his proof of the PGC with a note on the striking similarity between generic rights and the human rights as enumerated by the Universal Declaration of Human Rights.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 29.

[G]eneric rights are human rights. It may be helpful to see how they are related to the rights famously enumerated in the Universal Declaration of Human Rights promulgated by the United Nations in 1948. In general, the above analysis of the generic rights to freedom and well-being in its three levels can be construed as a rational reconstruction of the UN's list of rights. The preamble to the Universal Declaration refers to "the inherent dignity... of all members of the human family" and the concern "to promote social progress and better standards of life in larger freedom." In grounding human rights in the necessary conditions of human action I have sought to provide a clearer, more thorough, and more firmly rooted foundation for the declaration's human rights. For the most part, the generic rights based on the PGC coincide extensionally with the UN declaration's human rights, including its social and economic rights as well as its political and civil rights.

### Discussion Questions

1. Which of the premises in Gewirth's proof is most controversial?
2. What is necessary for someone to take action?
3. Compare and contrast this derivation of rights to the social contract theory of rights.

### Resolutions

1. Resolved: that inaction in the face of injustice makes one morally culpable.
2. Resolved: that a lesser-developed nation ought to value sustainable development over economic growth.
3. Resolved: that the principle of universal human rights ought to be valued above conflicting national interests.

## GEWIRTH'S THEORY OF POSITIVE RIGHTS

### Positive and Negative Rights

Gewirth's arguments for genetic rights put him in to the middle of a big debate in philosophical circles about positive and negative rights. Gewirth's argument that all people have a generic right to well-being obviously requires the distribution of resources to the needy in society. Gewirth specifically mentions that the generic right to well-being requires material resources, health care, and even education. This will require a considerable tax system and a dedication to uphold rights by providing services, instead of simply policing the community.

Theories of rights that only allow for policing functions reinforce the view that community and rights are irreconcilable.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 31-2.

When rights are viewed solely as negative, in that their correlative duties require only non-interference with persons' having the objects of their rights, the adversarial conception of the relation between rights and community is given ready entry. For persons can then fulfill their duties by simply not interfering with or intervening in one another's actions or projects; or, to put it in another way, the having of negative rights entails the warding off of interference from other persons. Although such noninterference is itself valuable as an essential part of freedom and of noninfliction of suffering, when it is the sole conception of rights it may lead to a view of society as consisting of atomized, mutually disregarding, alienated individuals with no positive consideration for cooperation in helping to fulfill one another's needs or interests or for rectifying the extreme inequalities of wealth and power that characterize more societies.

How should one judge a theory of rights? If you judge a theory of rights based on the results of that theory, Gewirth argues that exclusively focusing on negative rights will lead to people ignoring the problems inherent in social inequalities. Many people would argue that you should judge a theory of rights based on the validity of the various premises used to construct and justify the theory. Gewirth has an argument for these people as well. Exclusive attention to negative rights comes from an empty view of human nature as "atomized, mutually disregarding, (and) alienated." Gewirth here suggests that the model of the negative rights is based on an incomplete model of the person. People are not atomized (completely separate from each other). People are not mutually disregarding (we actually care about other people). People want to live in groups and societies. A full model of the person, one based on the social nature of human beings, will justify positive as well as negative rights.

Positive rights will lead to (and are derived from) a fuller model of social persons.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 32.

The case is otherwise, however, when it is recognized that human rights are positive as well as negative. For, as positive, they entail mutual obligations to help persons to fulfill their essential agency-needs and thereby move closer to equality. As a result, a human society based on positive human rights requires not only that persons refrain from coercing or harming one another but also that they help one another. This requirement of help is not, however indiscriminate or open-ended; it is concerned rather to enable all persons equally to become, and to function as productive agents who can provide for their own needs, while also making effective contributions to the fulfillment of other persons' needs and desires on a basis of mutual respect and cooperation. Thus positive rights serve to relate persons to one another through mutual awareness of important needs and, as a consequence, affirmative ties of equality and mutual aid. Hence, if there are indeed positive human rights that must be acknowledged as such by every rational agent, then this provides a rational and mandatory and solidarity of the community of rights.

Positive rights are not only the most controversial part of his theory, they are also the lynchpin of this argument. Positive rights serve as the basis for the conciliation of rights and community. It will be particularly important for Gewirth to provide strong arguments justifying positive rights. He starts by tying positive rights to the definition of rights.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 36.

Freedom may be construed negatively as not being interfered with or coerced, so that the right to freedom would entail both the duty to refrain from interfering with or coercing someone and the duty to prevent such interference or coercion. But since freedom consists more generally in controlling one's behavior by one's unforced choice, the positive right to freedom also entails the positive duty to help persons to have or attain such control on a continuing basis and as matters of personal responsibility, and right only to refrain from interfering with such controls. As for the positive right to well-being, this entails that persons be helped to have food, housing, education, income, health care, and other components of basic and additive well-being when they cannot obtain these by their own efforts. As we shall see, the correlative duties bear not only on individuals as recipients but also on the economic and political structures of whole societies.

The key will be supporting a positive definition of liberty. Many authors (notably Hobbes) would not call a natural impediment to action a loss of freedom. If I cannot eat because someone is holding me down, Hobbes would say that I am unfree. If I cannot eat because there is no market near me or I have no money, I am not unfree. No one is stopping me. I just lack resources. Gewirth argues that a lack of resources does make one unfree. This basic definitional difference of opinion is the basis of the conflict between the two theories. It is not clear how one can rationally decide between the two senses of the term freedom, but the choice is very important. A person that chooses Hobbes' definition will probably end up supporting a negative rights view. A person who chooses Gewirth's definition will probably adopt a theory of rights including positive rights. It all comes down to which definition you accept.



Gewirth continues in his proof format to describe his argument for a positive generic rights.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 39-40.

Since freedom and well-being are necessary conditions for action and successful action in general, every actual or prospective agent has a general need for their components. Hence, every agent has to accept (4a) "I must have freedom and well-being." This 'must' is practical-prescriptive in that it signifies the agent's advocacy of his having what he needs in order to act either at all or with general chances of success. Now, by virtue of accepting (4a), the agent also has to accept (5a) "I have positive rights to freedom and well-being." For, if he rejects (5a), then, he also has to reject (6a) "Other persons ought to help me to have freedom and well-being when I cannot have them by my own efforts." By rejecting (6a), he has to accept (7a) "Other persons may (i.e. It is permissible that other persons) refrain from helping me to have freedom and well-being when I cannot have them by my own efforts." And by accepting (7a), he also has to accept (8a) "I may not (i.e., It is permissible that I not) have freedom and well-being." But (8a) contradicts (4a). Since every agent must accept (4a), he must reject (8a). And since (8a) follows from the denial of (5a), every agent must reject that denial, so that he must accept (5a) "I have positive rights to freedom and well-being."

Critics would attack the link between (7a) and (8a). They argue that there is nothing wrong with assuming that other people are permitted not to help me. The link between (7a) and (8a) requires assuming that one will be needy at one time or another. This is a contingent prediction. This is not a logical necessity. If the proof is to work, all of the premises must be logical requirements or universal necessities. Historical contingencies invalidate the supposed universal application (and hence moral application) of the argument. Gewirth sees the assumption of neediness as universal and thus the universal morality of positive duties.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 40.

[O]n the basis of the necessity of freedom and well-being for action and successful action in general, no actual or prospective agent can rationally deny that she has a positive right to these necessary goods and that she has a duty to provide for others when they need help, and she is in a position to give it without comparable cost. As rational, she has especially to recognize that there may be times, more or less extensive, when phases of her freedom and well-being may be threatened so that she may need the help of others, because she cannot have or maintain these necessary goods by her own efforts.

The "necessity" of accepting an obligation to help leads to a positive duty to help.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 40.

The further steps of this argument are also parallel to the argument for negative rights. Each step logically must admit that the sufficient reason or ground on which he claims positive rights for himself is that he is a prospective purposive agent, so that he must accept the generalization that all prospective purposive agents equally have positive rights to freedom and well-being. Hence, he must also accept that he has positive duties to help other persons to attain or maintain freedom and well-being when they cannot do so by their own efforts and when he can give such help without comparable cost to himself. When such help is needed by large numbers of persons, and especially when their needs have institutional roots, such help requires a context of institutional rules, including the supportive state as the community of rights.

The obligation to help is not based on any notion of history or reciprocity. It is not because I owe you some debt that I accept the duty to help you. I accept the duty to help you because of the common qualities we share (that whole actual agent thing...). Obligations are based on mutuality (a recognition of shared characteristics) not reciprocity (historical or theoretical exchange of goods).

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 41.

It must also be noted that the rational agent's recognition and support of other persons' positive rights does not have as its ground merely, or even primarily, a kind of "rational," strategic, self-centered calculation of how according these rights to others may probably help him receive such help himself when he needs it or may otherwise benefit himself. The ground is primarily not one of reciprocity but rather of mutuality. It is not a contingent matter of quid pro quo but rather a necessary matter of persons' common humanity as purposive agents. The agent recognizes that other persons are similar to her in being prospective purposive agents and having the needs of agency, and on this ground she rationally accepts that they have the same positive rights she necessarily claims for herself. Thus a kind of community, a common status of having needs that require for their fulfillment the positive help of others, lies in the background of the argument for positive rights, so that rights and community are in this way also brought together.

Gewirth will return to the theme of mutuality later. For now, just notice how Gewirth distinguishes mutuality from reciprocity. This is what distinguishes Gewirth from contractual theories of rights and justifies my placement of his theory in this book.

Gewirth turns to consider some of the implications of positive generic rights. He starts with examples of how the positive rights affect the institutional design of states (the various policies that they must implement in recognition of positive generic rights).

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 41-2.

[T]he argument for positive rights applies also to situations where threats to freedom and well-being arise from social or institutional contexts, such as where economic or political conditions make for unemployment, homelessness, or persecution. Secure and affluent persons, even when they are confident that that will not personally face such threats, must at least concede that if they were threatened by such socially based misfortunes, they would then need and, as rational, would want to be helped. Such cases are close to the point noted above that the need for positive assistance may arise from the requirement to refrain for certain kinds of actions or policies so that the rights in question are "mixed." The need for positive rights, however, occurs not only in the case of threats but also to promote the affirmative development of freedom and well-being as necessary goods of successful action, and as reflecting the mutuality of human rights. In these ways, the human rights also bear on social structures that affect and reflect the comparative degrees to which different groups and classes attain these necessary goods.

It is absolutely clear that Gewirth is arguing in support of a large welfare state. He specifically addresses the need to have policies preventing poverty and unemployment. This welfare state does have limits. The positive generic rights only obligate others to help you when you cannot help yourself.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 42.

In the above argument, unlike the argument given earlier for negative rights to freedom and well-being, there is included an important addition, namely the qualification in steps (6a) and (7a), that the agents cannot attain some phase of freedom and well-being "by his own efforts." This means that in the 'ought'-judgment (6a) he cannot rationally demand of other persons that they help him to have freedom and well-being unless his own efforts to have them are unavailing. For without this qualification there would not follow (8a) "I may not (i.e. It is permissible that I not) have freedom and well-being." In this way, the positive rights require personal responsibility on the parts of the would-be recipients of help: the responsibility to provide for themselves is at all possible, prior to seeking the help of others.

This will soften the blow to many critics of the proof of positive rights. It is much more reasonable to argue that the positive duty is conditional on true need. This substantially limits the scope of the positive duties. In practical application, the principle becomes problematic. Philosophers can talk about true need, but it is hard to identify in the real world. With the welfare reform movements in the early 1990s, need has been a catchword. Welfare organizations have tried to identify (and help) the truly needy while not wasting money on the people who do not truly need the money. The problem is that "need" is a socially constructed term. Who is truly needy? Application of the "truly needy" qualifier to welfare has been used in some suspicious ways. Some accuse these programs as using "need" as a cover for racism. Most people would agree that only the needy should get help, identifying the needy is difficult. Implementation, however, is not Gewirth's concern. He leaves that to political scientists and policy specialists (like me).

Gewirth also notes that the generic right to well-being includes much more than minimal food and water for survival. It also includes a right to such goods as education and productive jobs.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 42-3.

[B]asic well-being includes more than mere life; it also involves such necessary goods as the maintenance of health, which requires adequate levels of food, clothing, shelter, and other necessities, including a physically healthful environment. Within the limits of available resources, there must also be a secure assurance of continued supplies of such goods. Hence, persons have positive rights to the help of others if by their own efforts, including their own abilities of personal responsibility, they are incapable of maintaining this assurance while other persons are able to provide it out of their surplus. There are also additive goods, such as education, which directly are helpful not for basic well-being but for enabling persons to increase their levels of purpose-fulfillment. Since, however, education is a prime means of helping persons to maintain their basic well-being by their own efforts, including their acquisition of productive skills, the positive rights also extend to such means so far as they are available.

Positive rights extend to all things that are necessary for action, as well as all things that are "a prime means" of "maintaining their basic well-being." The list of rights is getting long quickly. Gewirth spends the rest of his book discussing the policies that are necessary to uphold these rights.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 44.

[W]hen it is said of someone that she cannot attain some phase of freedom and well-being by her own efforts, this "cannot" may have different bases. Some may be natural, such as age or illness; but others may be institutional or structural, such as poverty or involuntary unemployment. The institutional bases may also affect quite seriously how the natural bases are dealt with, ranging from the negative extreme of complete social noninterference and indifference to various positive social measures of assistance. For this and other reasons, the primary emphasis of this book falls on the institutional effectuation of positive rights, including the greater approach to equality that they serve to promote.

### **Needfulness and Rights**

Up to this point, Gewirth has focused on justification of positive rights. Now Gewirth discusses a system for prioritizing rights. This is something that we have to do in LD all of the time. Many resolutions ask us to compare two rights. Saying that rights are important is not helpful in this regard. If all rights are good, we cannot tell what to do when rights conflict. Gewirth reminds us that effort is an essential part of agency, as part of his argument that positive rights are limited to the needy poor.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 43.

Effort is an essential part of agency, directly related both to the conativeness that figures in one's pursuit of one's purposes and to the freedom that consists in controlling one's behavior by one's unforced choice. When it is held that a person's right to be helped by others is contingent on the insufficiency of his own efforts, this serves to bring out an important limitation on the duty to help and also the direct connection of the human rights with the needs of agency. Far from advocating an open-ended dependence on the help of others, the PGC's requirement of positive rights aims to develop and maintain for each person the freedom and well-being whereby he can have and use, as matters of personal responsibility, his own productive abilities, with the efforts they involve.

Since neediness is the basis for positive duties to assist, it can serve as the basis for prioritizing rights. Needfulness represents the degree to which a person is unable to act towards his or her own purposes.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 45.

[T]hese rights has as their object the necessary conditions of action and successful action in general. From this derives one of the main bases of the resolution of conflicts of rights, which I shall call the criterion of degrees of needfulness of action. In an initial characterization, this criterion may be stated as follows: When two rights are in conflict with one another, that right takes precedence whose object is more needed for action. This is why, for example, the rights not to be stolen from or life to be overridden by the right not to starve or be murdered is the latter rights can be fulfilled only by infringing the former.

This is another one of those quotes that is just fabulous for LD rounds. We often face exactly the choices that Gewirth describes. Too many authors dodge the issue of what to do when rights conflict. Some deny that rights can conflict. Others just ignore the issue as a mundane, political issue for politicians to decide. Gewirth gives you a method for resolving rights conflicts coming right out of his theory of rights. If rights are indeed practical necessities for action, then the degree of the necessity is a reasonable way to adjudicate rights conflicts. Of course, you will have to accept all of the other parts of Gewirth's proof of rights, but that is still a great support foundation for a case. In many ways, this is the answer that Kant never made in his theory of duties. I suspect that if pressed, Kant may have made a similar clarification to his footnote regarding the preference for duties with stronger "groundings."

The ability to prioritize rights allows Gewirth to build hierarchies of rights.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 46.

Now the kinds of freedom also fall into such a hierarchy. 'Freedom' should not be used as a global, undifferentiated concept. There are distinctions between occurrent or particular freedom and dispositional or long-range freedom, and also between different objects of freedom. A temporary interference with a relatively minor freedom, such as a traffic light, is morally less important than a long-range interference with the freedom to perform some highly valued action. Hence, if the more affluent persons are taxed so that a relatively small part of their wealth is removed in order to prevent the destitute from starving, this is a far less significant interference with their freedom than would be the case if they were forced to surrender most of their wealth or were prohibited from supporting political parties, religions, or universities of their choice. So to refer to such taxation as imposing "forced labor" (with its evocation of the cruelties inflicted in totalitarian concentration camps) is to utter an exaggeration that debases the currency of political discourse. Thus, it is not freedom in general that positive rights restrict. By the same token, the right to freedom in the use of one's surplus property is not absolute; it may be overridden by other rights such as the basic rights to life, health, or subsistence, since the object of the latter rights are more pressing because more needed for action.

Gewirth introduces a couple of concepts that can be useful in the previous quote. First, he distinguishes long-term from minor interference with rights. Long-term interferences are much worse than minor interferences. This gives you one weighing mechanism for rights violations (something that is all too rare in LD rounds). Second, Gewirth directly attacks the Nozickean argument that taxes are forced labor. This is a strongly worded reply to the most popular modern attack on taxation. Of course, all of these minor weighing mechanisms are couched in the larger criterion of degrees of needfulness. The criterion is the fundamental principle operative in the hierarchy of rights, particularly as regards the generic right to well-being.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 29.

[T]he criterion of degrees of needfulness for action applies not only to the right to freedom, but also to the various components of the right to well-being. In particular, the right to basic well-being takes precedence over the rights to other levels of well-being.

The basic rights to well-being, then, override the rights to additive well-being. You cannot take food from the starving to build a school for the non-starving. You must deal with deprivations in the order of need. Of course, conflicts between rights to education and rights to food are rare. The conflict is more likely to be between rights to surplus property (above and beyond what is necessary to live and prosper) and the rights to food of the poor. Of course the latter conflict falls under the previous discussion. This provides some guidance of what to do in the horrible situation of where you must choose between food and education.

Gewirth must contend with the Kantian/Nozickean argument that taxation uses some people as a means to others. He has made his argument about the priority of rights. Now he has to respond to the argument of his potential critics.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 46-7.

Persons are not treated as mere means, not is their rationally justifiable freedom violated, when they are taxed in order to support the positive right to basic well-being of other persons who are suffering from economic privation. For the principle underlying the taxation of the affluent to help others is concerned with protecting equally the rights of all persons, including the affluent. The PGC's mutualist requirement that agents act in accord with the generic rights of their recipients entails that all prospective purposive agents must refrain from harming one another (according to the criteria of harm) and also that in certain circumstances they must help one another if they can. Hence, limitations on their freedom to abstain from such help are rationally justified.

Gewirth does not provide a fancy argument about the nature of the person (as does Rawls). Gewirth simply argues that the generic rights are mutually derived and mutually protected. This mutuality provides protection against that argument that a person is used in order to uphold the rights of others. The rich are protected as well as the poor. It is their mutual characteristics that define the rights, so the separation of fortunes in the current time does not justify limiting the duty to aid (as long as all actually do share in the possibility of aid from others).

Gewirth must also deal with the accusation that need is subjective (like the argument I made earlier). He argues that need is actually an objective quality and is not socially constructed.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 51.

[T]he objects that are compared according to their degrees are not, as with the utilitarians, such vague entities as "utilities" construed as "desires" or "preferences," whose difficulties of interpersonal comparison, while not insurmountable, may nevertheless be severe. The objects compared in the degrees of needfulness for action are precisely those: needs for agency; the goods that must be had either for the very possibility of action or for having general chances of success in action. These goods are objective and not relative to particular, possibly idiosyncratic standards set by preferences or desires.

Gewirth limiting the sorts of consideration that one must make in defining relative needfulness helps the claims of objectivity. This resembles the tactic that Rawls uses in defining primary goods as a measure of social position rather than utility.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 51.

The phrase "utilitarianism of rights" seems to imply a restless calculus reflecting a constant readiness to interfere with rights in order to come out with a weighted minimum of rights-infringements. Such interference could make action, with its need for stability or purposive planning, difficult or impossible. The context of action, on the other hand, requires only comparisons restricted to wide and readily ascertainable disparities in degrees of importance between the objects of rights. The aim is not to cripple some persons' actions in order to facilitate the actions of others, but rather to make the necessary conditions of action available to all prospective agents. Thus, for the most part, the criterion is restricted to areas where the basic well-being of some persons requires infringing the additive well-being of other or the freedom associated with the latter well-being, as in my above examples of lying to prevent murder or stealing to prevent starvation.

Specifically addressing Nozick's example of taxation resembling the forceful removal of one of his eyes in order to help a blind person, Gewirth notes that the sacrifices require to uphold the positive generic duties will not include a violation of one's physical integrity.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 51.

A third, closely related point concerns the limits of the application of the criterion of degrees of needfulness. These limits are especially set by the physical integrity which is an essential part of basic well-being. The policies cited above, removing healthy persons' kidneys or eyes to prevent the death or blindness of other persons, are attacks on the former persons' physical integrity. As such, they pose serious threats to their continued agency. Persons can indeed survive with one kidney or one eye; but, apart from their voluntary consent, the criterion of degrees of needfulness cannot justify such inflictions of basic harms. It is a serious category mistake to assimilate such sacrifices to the taxation whereby transfers are made from persons who can well afford them to relieve the misery of others.

The priority of needfulness also limits the ways that a country can create welfare policies. It cannot create dependence in its welfare systems. The whole idea is to help people so that they can achieve their own goals. To the extent that a specific welfare system creates dependence, it is not morally justified.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 52.

The criterion of degrees of needfulness for action bears on each person's needs of agency; hence, it is quite different from a policy that encourages passive recipience or dependence on the agency of others. This point bears both on the equalization of wealth to which utilitarianism seems to lead and on the argument whereby the criterion was held to disjustify automobile driving. ...[T]he criterion of degrees of needfulness does justify certain monetary transfers. Nevertheless, it does not go so far as complete equality. The utilitarians halted the movement to equality, based on the diminishing marginal utility of money, through the need for incentives: if wealth is equalized, the incentive to work, let alone work hard, is removed; hence redistribution must stop very far short of complete equality.



Transfers are only necessary to establish a minimum set of capabilities. The state need not transfer wealth until all have the same options. That would require a complete leveling of the wealth distribution. Instead, Gewirth argues, we need only support a floor of minimal resources.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 52.

The principle of human rights, while also taking account of the incentive factor, has a related but distinct emphasis. The rational autonomy which is the aim of the human rights involves that each person is to be a self-controlling, self-developing agent, in contrast to being a dependent, passive recipient of the agency of others. Even when the rights require positive assistance from other persons, their point is not to reinforce or increase dependence but rather to give support that enables persons to be agents, that is, to control their own lives and effectively pursue and sustain their own purposes without being subjected to domination and harms from others. For this reason, the criterion of degrees of needfulness for action justifies only such monetary transfers as enable persons to acquire and exercise the ability for being productive agents on their own behalf.

### **Mutuality**

Earlier, Gewirth distinguished mutuality from reciprocity. In this section, I will discuss his development of the mutuality of rights and the reconciliation of rights and community. Mutuality is the key. Gewirth starts with a general explanation of mutual consideration.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 75.

[I]n a mutual relation, A gives some valued X to B and B gives some other kind of valued X to A. This relation is exemplified in, but is not confined to, some forms of economic exchange. Thus A and B are equal as participating in this interactive relation, and, so far as practicable, the respective amounts of X are also equal. It is this mutuality that figures in the principle of human rights where, in principle, all humans are both the subjects and the respondents of the rights, in that each human respects and protects each other human's interests in freedom and well-being. Here, as above, the qualification about practicability and governments must be kept in mind, but they do not remove the mutualist principle, with its import for the community of rights.

Gewirth continues his explanation of mutuality by distinguishing mutuality from reciprocity (the principle common to most contractualist theories of rights).

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 76.

The better to understand this mutuality, let us compare it with reciprocity. Although each of these may vary in certain ways, I shall here define reciprocity to the returning of good for good received, and mutuality to the relation intrinsic to the PGC as the principle of human rights whereby all persons have generic rights against one another and hence also correlative duties to one another. It may be difficult to distinguish reciprocity from mutuality in certain contexts, for each is a dynamic symmetrical relation. In reciprocity, if A does good for B, then B does good for A. In the mutuality of human rights, A has rights against B and B has rights against A.

This definition provides Gewirth with a number of reasons to distinguish reciprocity and mutuality.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 76.

There are, nevertheless, at least four important differences that can generally be used to separate them. One is temporal. Reciprocity involves a temporally prior benefit; once A has received a benefit for B, A then should return some comparable benefit to B. Thus, reciprocity is reactive or responsive. The relation involved in the mutuality of human rights, on the other hand, is one of simultaneity. A and B directly have against one another such rights as not being physically injured or lied to and being helped when in dire need, and these rights do not require some prior benefit given to B by A or A by B. Just as they are simultaneously right-holders against one another, so they are also duty-bearers or respondents to one another.

The mutualist arguments are non-historical. While contractualist arguments assume some temporal relation, mutualist arguments do not. This is important for a number of reasons. Temporal reciprocity creates problems when one considers questions about future generations. Future generations do nothing to benefit us. Does that mean that we need not do anything to preserve resources for future generations? The mutualist argument can deal with this with ease. Future generations are prospective agents. We must treat them as part of the mutual definition of rights and duties. Second, there is no debate about the comparability of the goods exchanged. In a mutualist exchange, all are getting the same rights and duties by definition. In a historical contract, you have to wonder about the conditions of the transfer and who gets what. Furthermore, inequalities of power that predate the contract can contaminate the contract. The mutualist position is, very simply, the deontological response to the contractual models of justice.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 76-7.

From this temporal difference there directly follow two other differences between reciprocity and mutuality. The beneficiaries of reciprocity, the persons to whom benefits are owed, are limited to one's prior benefactors. Because A has benefited B, B should benefit A. Thus persons are excluded from the benefits of reciprocity if they do not, or are not in a position to, confer on disadvantaged persons. This can have severely adverse effects on disadvantaged persons. In the mutuality of human rights, on the other hand, the beneficiaries, the rights-holders to whom duties are owed, are not thus limited. The benefits of human rights are universal; they are owed to all persons as actual or prospective agents, regardless of whether some have antecedently conveyed benefits to other persons. There is, indeed, a certain proportionality in the having of human rights, but this bears only on the inherent capacities for being agents and for benefiting from fulfillment of rights. Thus as we have seen, children, severely injured or mentally deficient persons, and animals lack in varying degrees some of the practical abilities of the generic features of action: the abilities to control one's behavior by one's unforced choice, to have knowledge of relevant circumstances, and to reflect rationally on one's purpose.... A parallel difference bears on the persons who owe benefits. In reciprocity the giving of benefits is an obligation only of those who have previously received benefits. But the mutuality of human rights involves that all persons are in principle the duty-bearers or respondents; the duties correlative with the rights are owed by all persons, not only by those who have been prior beneficiaries of others' actions. By this mutuality, all persons are directly members of the community of rights, and the state through its taxing and other power must embody it.

Gewirth also notes that reciprocal relationships are contingent, not necessary. By his previous argument, this means that reciprocal relations cannot be the bases of universal moral obligations. Only necessary conditions can be the basis of moral duties and human rights.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 77-8.

A fourth difference concerns modality, in two respects. First, the antecedent of the reciprocity relation is a contingent one: if A has received some good X from B (this receipt being contingent on an optional decision by B), then A owes a fitting response to B. This contingency is also found in contractualist theories, where the rendering of benefits is contingent on person's prior agreement or contracts. In the mutuality of human rights, by contrast, the antecedent is itself necessary: Because other persons have human rights against you (these rights not being contingent for their generation or validity on some prior optional beneficent actions on their part), it necessarily follows that you have correlative duties to them. Their having the human rights in questions, as we have seen, arises from the necessary needs of human action and generally successful action; it is not contingent on optional prior decisions to confer benefit. ... [T]he objects or benefits themselves also differ in a parallel way. The benefits given and owed in the relations of reciprocity may be various contingent goods. But the objects of the mutual human rights are necessary goods: what is needed either for the very possibility of action or for having general chances of success in fulfilling one's purposes. Moreover, where in reciprocity the amounts of goods that are owed varies with or is proportional to the amount of goods that were initially bestowed, in the mutuality of human rights the amount of goods owed is relatively constant. All persons have rights to the necessary goods of action and generally successful action. And it is to the fulfillment of these rights that the community of rights is dedicated.

The mutuality of rights has important effects on human psychology. First, these rights lead to individual self-esteem and self-respect. These qualities are important parts of any person's ability to pursue and define their own goals. You will only use your freedom if you feel that you are worthy of possessing freedom and pursuing goals.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 79.

The mutuality of human rights is an important ground of persons' self-respect. For in recognizing that they are both the subjects and the respondents of rights, persons see that they fulfill essential moral requirements. There is an important difference in this regard between self-respect and self-esteem. Persons' self-esteem is based on their conviction about the value of the purposes they pursue in their actions and on their ability to fulfill these purposes. But self-respect adds the vital moral considerations that persons fulfill their obligation to help other persons to secure their rights to the necessary conditions of their actions and they themselves have the correlative rights.

The positive generic rights also lead to a greater social unity. Recognizing their common rights, people are more likely to act as members of a community. In that the relation of rights and duties defines this community, this is the long-foreshadowed community of rights.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 79.

The mutuality of human right has an essential role in the conciliation of rights and community and in the community of rights reflected therein. For... the fact that humans have positive duties to one another by virtue of having human rights entails the kind of required mutuality of consideration that figures directly in social solidarity and thus in the community of rights. The moral requirement that governments enforce rights and thereby enable all humans to have the necessary goods of action is a direct consequence of the mutuality of rights. And this governmental provision is an important part of what constitutes a morally justified state as a community of rights.

The government provision of generic rights is important in this process of building a community of rights. Gewirth seems to suggest that a community will develop, over time, as the government acts on behalf of the positive duties of its citizens. The development of community is, therefore, a very different type of argument than the moral justification of rights. Community building is a process that can really only occur over time. This is almost a psychological argument (not a morally necessary proposition). Any way, this is the normal type of discourse in communitarian theory. Gewirth has simply tied the deontological theories of rights in to the evolutionary arguments of community development.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 79-80.

Since freedom and well-being are necessary goods of agency, their provision should not be made contingent on the optional choices of persons or groups. Because without freedom and well-being one cannot be either an agent at all or a generally successful agent, one must have an assurance, so far as possible, that these goods will be securely possessed. Positive rights with their correlative strict 'oughts' provide the normative grounds for such effective assurance. These 'oughts' are directly translatable into legal enforcement, in a way that the looser 'oughts' of charity are not. So charity, while very valuable, cannot do the normative work accomplished by rights. By the same token, this assurance cannot be provided by a utilitarian calculus, not only because such a calculus may have negative results for some persons but also because it would obscure what is brought out by the primary emphasis on rights: that the goods in question should be the personal property of each prospective agent, under her control and due to her for her own sake and not merely as a means of maximizing utility.

All of the state action to enforce positive duties links the PGC to community.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 82-3.

There are two main bases for calling the PGC's society of human rights a genuine community of rights. First, the society provides for equal and mutual assistance to secure persons' human rights. It does so by equally protecting and promoting the freedom and well-being of all its members. In the first instance, this is a matter of institutional arrangements focused in the society's legally enforced policies, so that they serve to secure legal rights. But these arrangements already mark a departure from egoism and individualism, because the positive obligations they require through taxation and other means involve that persons must mutually further the agency-related needs and interests of other persons besides themselves, especially those who are more deprived. In these ways the society through its institutional arrangements makes indispensable contributions to its members' education, health, safety, and various other social and economic goods that comprise the necessary conditions of action and of generally successful action, and thereby it helps them to attain a position of personal responsibility.

The society subtly learns communitarian attachments. The institutional arrangements that enforce positive duties, also serve to inculcate community values. Over time, communities grow. Gewirth notes that the social nurturing process that develops is itself necessary for agency.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 83.

These conditions indicate a second, closely related basis for calling the PGC's society a community of rights. Where the first basis consisted in the society's contributions to effectuating the human rights of its members, the second basis goes in the reverse direction: by virtue of these contributions, the members have, recognize, and accept obligations to the society. Because of the society's contributions all persons are to some extent "social products": the nurturing they receive from their social context, is a necessary condition of their being successful purposive agents. I shall call this the social contribution thesis.

The various relationships between positive duties and social solidarity lead to a tight relationship between rights and community: a community of rights.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 84.

The community of rights, then, means not only that the community supports the rights of its members but also that those rights support the community insofar as its support of its members' rights both enables and obligates them to support the community. The members' contribution to the society as a community of rights may range from the work they do in providing exchange values whence they derive income, through paying taxes to support the community, to much more heroic contributions in military service and other ways of protecting the society. But in all such modes of action the relation of mutuality is paramount whereby persons fulfill one another's needs and rights. They have obligations to the society enabling the development of this mutuality.

This is essentially a deontological reason for the intermingling of rights and community. The two terms are inseparable conceptually. Gewirth notes that there are psychological reasons for the formation of a community of rights as well.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pgs. 85-6.

The obligations generated according to the social contribution thesis indicate a further way in which the PGC's society is a community of rights. Because the society functions to fulfill their human rights of agency, its members develop psychological attitudes and loyalty to it, so that it becomes a community of cooperativeness and fellow feeling. .... The institutional structure, therefore, is mutualist, not egoistic, while at the same time it helps to move the poorer members of society closer to equality. But in addition, the persons who participate in this structure can come to see, as rational, that the society is a just and genuine community because of its mutual sharing of benefits and burdens, and thereby its upholding of equal rights for all. The rights are thus moral as well as legal, and it is their morality that underlies and justifies their legality. This psychological element of awareness, of understanding and rational and emotional acceptance and support, accompanies the institutional structure and makes it a community not only of institutions but also of fellow feeling.

Part of the argument for the opposition of rights and community is symbolic. Rights are often objects held "against" other people. To assert a right is to assert a claim "against" other people. Communitarians are very uncomfortable with the oppositional language of rights and rights claims. Gewirth argues that invoking rights is not necessarily oppositional in this way.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 90.

The invocation of rights need not mean that communal attachments or fellow-feeling are not present. If persons' agency-needs are provided for in an institutionally secure way, it may not be necessary to actually invoke rights. Nevertheless, the very security of the protection that is provided would provide a sign of the implicit operation of rights, that is, of protections of important interests that ought to be secured to persons for their own sakes. Even if the mandatoriness of this 'ought' is not explicitly invoked against persons charged with fulfilling it, the great importance of the interests in question makes mandatory an at least implicit recognition of the duties and so of the correlative rights.

It is in fact the community that protects right. Protecting rights, in Gewirth's model, does not require suspending the mutuality of community. In fact, discussing rights creates a dialogue about mutuality and thus can reinforce community attachments.

Gewirth, Alan. THE COMMUNITY OF RIGHTS. 1996. Chicago, IL: The University of Chicago Press. Pg. 97.

It can be readily understood in this context how rights and community come together. The rights have as their objects the necessary goods and interests of individuals, to which they are entitled and which they may justifiably claim as their due. But it is the community that protects and fulfills these rights, especially for the persons who do not effectively have them, on the basis of the mutuality that characterizes human rights and the consequent solidarity of the society whose members are brought together by their recognition and fulfillment of common needs. Thus rights require community for their effectuation, and community requires rights as the basis of its justified operations and enactments.

With this Gewirth has met his original aspiration of creating a community of rights. He has overcome the supposed opposition of community and rights by focusing on rights as the recognition of mutual interests and positive duties. Only by breaking out of the traditional negative rights theory was he able to bring these arguments together; uniting the necessary principle of deontological theory with the psychology of the communitarian arguments.

This only breaks the surface of Gewirth's argument. The section described here only covers the foundations of Gewirth's theory of morality and rights. There are a number of other arguments regarding specific welfare policies and economic arrangements. Gewirth applies his community of rights to a wide variety of specific policies. The book provides a number of these policy analyses as application of the sometimes-abstract moral theory described here. If you are interested in the applications (and all LD debaters should be) you should go to the original text.

### **Discussion Questions**

1. What positive rights are included in Gewirth's generic right to well-being?
2. Is needfulness an objective standard?
3. How can one assert that one's rights have not been respected without damaging community attachments?

### **Resolutions**

1. Resolved: that government provision of welfare to the poor ought to be valued above individual economic freedoms.
2. Resolved: that the provision of basic human needs ought to take priority over individual property rights.
3. Resolved: that an individual's obligation to him or herself ought to be valued above an individual's obligations to his or her community.



## CONCLUSIONS

So what does this elegant and developed theory offer us as LDers? Kant builds an elegant theory from the most fundamental propositions. For this reason, the theory presented is very popular as an academic moral philosophy. It is very complete and quite well developed.

Enough about the academic interest in Kant; what does it mean in rounds? I tend to think that it is a dangerous position. Kant develops a good argument but he takes a long time to do so. Moreover, Kant's arguments use a very specific vocabulary that is not necessarily based upon colloquial definitions. This limits the power of Kant in LD rounds which are allowed only 45 minutes. The development of the theory allows for a full understanding; this is more useful in pointing out incorrect interpretations than it is in the development of independent voting issues.

Kant's fundamental arguments are still very useful. I would concentrate on the theory of morality as a duty based phenomenon. Kant presents some analysis that is very useful for any LD resolution that happens to contain the terms "ought." The specific analysis on the concept of duty places some interesting constraints on which arguments serve to prove ought based resolutions.

In the second section, Kant is articulate in his analysis of moral obligations in a political setting. He presents a contractual theory of politics based upon explicitly moral obligations. When resolutions look to moral obligations within political systems; Kant is one of the few major authors who explicitly deals with the moral obligations to the state. Beyond this, his approach develops a theory of international morality (in stark contrast to the international state of nature precluding moral action).

Finally, in Kant's moral theory of virtue, there is one major argument to remember. The universality of obligations requires that we treat others as we would be treated. He develops a moral system to support the intuitive concept of the "golden rule". This is an under-appreciated application of Kant's argument and it supports some intuitive notions of morality and universality.

Gewirth bridges the gap between Kant and most applied resolutions. His Principle of Generic Consistency is very similar to many of the ideas expressed in Kant's writings. Gewirth, however, applies the PGC to contemporary policy issues much like those you will confront in LD topics. He serves to apply deontological principles to topics as diverse as poverty and democratic procedures. Together, the theories of Kant and Gewirth illustrate the strength, and the complexity, of any deontological theory.

In conclusion, I suggest you pay careful attention to which specific doctrine applies to what type of resolution. There are a variety of arguments in this theory. But, remember the central theme of this theory of deontology: We ought to act upon duty alone. The question of all resolutions is: What duty is most important in a given instance? Use the arguments in this book as an arsenal of obligations with which you can support your case and support the duties you hold as universal law.

## EXAMPLE CASE

Moral philosopher Immanuel Kant argued that nations have limits on their actions just as people have limits on their actions. Just as citizens in a nation must respect the rights of other citizens, nations must accept limitations on the ways that they may treat other nations. These limitations make up the principles of "right" of international relations. Because the principle of right prohibits the possession of nuclear weapons, I stand resolved that the possession of nuclear weapons is immoral.

The resolution requires a judgment regarding the morality of possessing nuclear weapons. Clearly, the appropriate value to guide this judgment is morality. As Kant stated, "[the teachings of morality] command for everyone, without taking in to account of his inclinations, merely because and insofar as he is free and has practical reason. He does not derive instructions in its laws from observing the world around himself, and his animal nature or from perceiving the ways of the outside world, what happens and how men behave.... Instead reason commands how men are to act even though no example of this could be found, and it takes no account of the advantages we can gain, which only experience could teach us."

With this quote, Kant establishes the limitations of moral arguments. Moral rules are not based on observations of the world. Instead, moral rules are based on the intrinsic qualities of actions. Rules based on these intrinsic qualities are universal and timeless. These rules are categorical imperatives. Kant continued, "By categorical imperative certain actions are permitted or forbidden, that is, morally permissible or impossible, while some of them or their opposites are morally necessary.... A categorical imperative is one that represents an action as objectively necessary not indirectly, through some end that can be attained by that action, but through the representation of this action itself and hence directly". From this we can see that moral rules cannot be based on instrumental reasoning used to pursue values or goals. Morality is based on necessary components of the action under consideration. With these qualifications in mind, Kant suggested that moral rules include only those intentions that can be universal law. Kant argued, "the categorical imperative, which as such affirms what obligation is, is: act upon a maxim that can also hold as a universal law."

Kant provided some insight into the universal moral laws of international relations with his discussion of the principles of international right. Kant suggested that states live in a condition of perpetual conflict until the time when they can create an association of states. Just as individuals are obligated to create a state, states are obligated to create an association of states. Kant posited that, "Since a state of nature among nations, like a state of nature among individual human beings, is a condition that one ought to leave in order to enter a lawful condition, before this happens any right of nations, and anything external that is mine or yours which states can acquire or retain by way, are merely provisional. Only in an association of states (analogous to that by which a people become a state) can rights come to hold conclusively and a true condition of peace come about." Kant concluded that, "right during a war would, then, have to be the waging of war in accordance with principles what always leave open a possibility of leaving a state of nature among states... and entering into a rightful condition." This establishes the criterion for morality in international relations. Any action must be consistent with the development of an association of states. With the following two contentions, I will show that the possession of nuclear weapons is inconsistent with the development of an association of states because; first, the possession announces a willingness to cause an atrocity on other people, and second, because possession perpetuates a state of conflict.

[Due to the restrictions on the use of outside sources, for the benefit of the reader, the contentions will be shorter than they would in an actual case. Think about which of these claims need support from outside authors.]

Contention One: The possession of nuclear weapons is inconsistent with the development of an association of states because it demonstrates a willingness to perpetrate an atrocity. Nuclear weapons used against any populated area would be an atrocity of epic proportions. Possessing nuclear weapons suggests that one is willing to use the weapons in some potential scenario. Possession accepts the willingness to kill millions of people and expresses the will that other people are appropriate targets. This builds a wall between people that will forever prevent the development of an association of states.

Contention Two: The possession of nuclear weapons is inconsistent with the development of an association of states because it perpetuates conflicts between states. The possession of nuclear weapons announces one's distrust of other nations. The only reason to possess nuclear weapons is because of the fear of other countries. As long as the nuclear weapons remain, trust cannot develop. Even in a world where possession was common, people would never trust each other enough to develop any meaningful association of states.

In conclusion, the possession of nuclear weapons is inconsistent with the moral obligation to create an association of states. This consistency makes the possession of nuclear weapons immoral.

## ANNOTATED BIBLIOGRAPHY

Kant, Immanuel. THE METAPHYSICS OF MORALS. Ed. Mary Gregor. Cambridge University Press. Cambridge. 1996

This is the best translation of Kant's most complete theory of morals. You will often find certain parts of it translated. But, the Gregor translation serves as one of the few editions of the complete work. It is important to bring the whole work together so that all of the parts have context relative to each other and aren't considered in a vacuum.

Sullivan, Roger J. Immanuel Kant's Moral Theory. Cambridge University Press. Cambridge. 1989.

Kant is one of the few authors who requires that I suggest you look to secondary materials. They are necessary complements to any interpretation. This book, in particular, is both accessible and true to the original texts. An important way to evaluate the honesty of the interpretation is the extent of the citations. Sullivan cites extensively so that you can compare his thought with the arguments of others. All in all, this is the whole package.

## TERMINOLOGICAL APPENDIX

**Categorical Imperative** - a moral law that is binding on all people at all times. One can test whether an imperative is categorical by testing whether it can be a universal law.

**Generic Rights** - rights possessed as a rational, goal-seeking person. All claims that one must have in order to act are rights. The rights are generic in the sense that these requirements apply to all rational agents, not any particular person.

**Hypothetical Imperative** - a law that describes what is necessary for the pursuit of a goal. This is instrumental reasoning. A hypothetical imperative only describes an intention relative to a goal one is pursuing. It does not judge whether the goal is "good". Hypothetical imperatives are not categorically binding.

**Wide Obligations** - positive obligations to take actions. These obligations are generally vague and allow a number of actions within the obligations. For example, the obligation to improve yourself does not demand that you practice debate rather than choir; you are free to choose one.

**Narrow Obligations** - negative obligations to refrain from taking an action. These obligations are very specific and you have little discretion in applying these obligations.

## ACKNOWLEDGEMENTS

The acknowledgements page is a strange conceit in a series of books like this. Stranger still is the set of influences that drove me to write this page on this particular night. A powerful television show and a few hours of listening to music have made me nostalgic. The television show is hard to explain, but I will try with the music. In preparation for my trip to teach debate this summer at the University of Kentucky, I have been archiving my CDs in MP3 format so that I can take them with me. While doing this, I have been listening to a band that I first heard at the first debate camp I attended. Suddenly, I realized how much I have changed since that time, and how many debts I owe. The band has long since broken up, but debate is still a daily part of my life.

I could use this space to thank all of the people to whom I owe debts. I have done that in other places. I hope that the other acknowledgements will suffice. You know who you are and do not need a notation here to realize how important you have been to me. Between previous editions of these books, my LD Road Guide, and my own dissertation, I am all out of personal acknowledgements.

But, I still have to thank the debate community. It is a little vague but debate, as a whole, has had a profound effect on my life. I have had the opportunity to learn from people passionate about critical thinking and public speaking. I have been able to talk to intelligent people about justice and morality. I have been referred to great texts that could easily have passed below my radar screen. I am a much better person for my experiences in debate. As a coach, I have had the opportunity to share in the learning and success of a wide variety of students. I have had the opportunity to work with future national champions. I have been able to work with people who want nothing more than to break at a tournament. Both of these groups of students shared one quality: a passion for their work. The passion of a hard worker is truly contagious. I always come away from my summer coaching energized and ready to tackle my work just like the students at Kentucky return home to start preparations for the next year.

Above all else, debate is synonymous with opportunity. Debate opened doors for me. It helped me academically by opening doors of thought that would otherwise be closed. It opened doors by preparing me for the type of work I do now as a professor of social science. It opened doors into other cultures that I would never have experienced in my relatively sheltered life. I can only hope that my books can help open doors for people like the doors that were opened for me. All I can ever hope for is that my work can help someone get as much out of debate as I once got out of it.

Thank you for a great 11 years.